

March 19, 2015

**Report of the Committee to Study the Massachusetts Code of Judicial Conduct on the  
Proposed Code as Published for Public Comment**

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**Introduction**

In September, 2012, the Massachusetts Supreme Judicial Court established the Committee to Study the Massachusetts Code of Judicial Conduct ("Committee").<sup>1</sup> The Justices asked the Committee to review the current Massachusetts Code of Judicial Conduct ("Current Code") in light of the American Bar Association's 2007 Model Code of Judicial Conduct ("2007 Model Code" or "Model Code") and to consider whether the 2007 Model Code should be adopted in Massachusetts.<sup>2</sup> The Committee has completed its review and respectfully recommends that the Justices publish for public comment the accompanying Proposed 2015 Massachusetts Code of Judicial Conduct ("Proposed Code"). The Proposed Code reflects both structural and substantive changes to the Current Code. It is based primarily upon the 2007 Model Code, but also includes a number of non-conforming provisions, some of which are drawn from the Current Code, and some of which are new.<sup>3</sup>

The 2007 Model Code represents the first comprehensive revision of the 1990 ABA Model Code, although the ABA revised several specific sections in 1997, 1999, and 2003. The 2007 Model Code preserves most of the substance of the 1990 Model Code, but extensively reorganizes the content. Following a structure analogous to the ABA Model Rules of Professional Conduct, the 2007 Model Code includes Canons, which state overarching principles; Rules, which are enforceable provisions; and Comments, which provide guidance in interpreting and applying the Rules and, in some instances, identify aspirational goals. The 2007 Model Code also addresses several new topics, including specialty courts and self-represented litigants, and it explicitly endorses judicial outreach in order to improve public understanding of and confidence in the courts.

In 2003, the Supreme Judicial Court adopted the Current Code, which is based on the 1990 ABA Model Code. The Justices subsequently amended Canon 3B(9), effective January 1, 2010, and Canons 4A and 4B, effective January 1, 2013. The amendments to Canons 4A and 4B were proposed by a Working Group appointed by the Justices to recommend changes relating to judges' ability to speak to the public on matters related to the administration of justice. The Working Group also recommended that the entire Current Code be reviewed in light of the 2007 Model Code. The Justices adopted this recommendation and established the Committee for this purpose. The Justices appointed Justice Cynthia J. Cohen of the Appeals Court, the chair of the Working Group, to chair the Committee. The Justices also appointed each member of the Working Group to serve on the Committee along with eleven new members drawn from the judiciary, the bar, and academia. Likewise, Supreme Judicial Court Justice Fernande R.V.

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<sup>1</sup> A list of Committee members may be found in Appendix A.

<sup>2</sup> All references to the 2007 Model Code include the amendments adopted by the ABA in 2010.

<sup>3</sup> A redlined comparison of the Proposed Code and the 2007 Model Code has been separately posted for public review along with the Proposed Code and this Report. The extensive restructuring of the Proposed Code prevents a redlined comparison with the Current Code. However, correlation tables comparing the Proposed Code to the Current Code may be found in Appendix B.

Duffly continued in her role as the Supreme Judicial Court's liaison, and Supreme Judicial Court Staff Attorney Barbara F. Berenson continued to provide staff support to the project.

The full Committee met twenty-three times between November, 2012, and February, 2015. While most meetings ran for two-and-one-half hours, there was one full-day meeting in July, 2014, and an extended meeting in November, 2014. The Committee also communicated extensively by email. Early in its deliberations, the Committee agreed that it would recommend the adoption of the organizational structure of the 2007 Model Code. Soon thereafter, the Committee also agreed that it would recommend the adoption of the provisions of the 2007 Model Code unless there was persuasive reason either to retain a non-conforming provision of the Current Code or to recommend a new, non-conforming provision. Committee members agreed that consistency with the 2007 Model Code, which has been adopted in many other jurisdictions (albeit sometimes with modifications),<sup>4</sup> would offer the important advantage of making it possible to consult a national body of law when interpreting code provisions.

The Committee's work was greatly facilitated by each member's participation in at least two small groups. Each small group was charged with performing an in-depth review of several rules of the 2007 Model Code, including comparing these rules with analogous provisions of the Current Code, considering non-conforming versions adopted in other states, and making recommendations for the full Committee to consider. In several instances, the complexity of a particular issue warranted the appointment of a subcommittee to work over a longer period of time and, where necessary, to consult with court administrators and others. Subcommittees were formed to consider the topics of extrajudicial activities, ex parte communications in specialty courts (referred to in the 2007 Model Code as "problem solving courts"), and accommodations for self-represented litigants.

Committee members carefully considered every word of the 2007 Model Code. Even where the Committee decided to adopt a Model Rule and its Comments without any substantive change, it reached that decision only after thorough discussion of the provision, comparison of that provision to any analogous provision in the Current Code, and review of any non-conforming versions of the provision adopted in other states. Committee members engaged in lengthy and vigorous debate on a number of issues. Ultimately, however, the Committee was able to craft provisions that won the support of all members. Hence, there are no dissenting statements to this Report.

The Committee's work also was informed by scholarship in the field of judicial ethics and by ethics advisory opinions. In particular, the Advisory Opinions of the Committee on Judicial Ethics interpreting the Current Code helped the Committee to consider the practical and broad-reaching consequences of its work. Like the 2007 Model Code, the Proposed Code generally reflects a more expansive view of the role of judges in society. For that reason, some provisions of the Proposed Code will have the effect of negating, in whole or in part, advisory opinions that were based on the Current Code.

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<sup>4</sup> As of January 8, 2015, only four states have not established a committee to review their codes in light of the 2007 Model Code. Twenty-eight states and the District of Columbia have approved revised codes, four states have proposed revisions to their codes, and fourteen states have established committees to review their codes.

The Committee is very grateful for the assistance provided by the American Bar Association. Attorney Mark Harrison, who chaired the ABA Joint Commission to Evaluate the Code of Judicial Conduct, attended the Committee's first meeting and offered insightful suggestions not only with respect to substantive matters but also as to the Committee's structure and process. Professor Charles Geyh, a Reporter to the ABA Joint Commission to Evaluate the Code of Judicial Conduct, graciously responded to the Committee's questions, and John Holtaway, the ABA's Lead Senior Counsel, Policy Implementation and Client Protection, provided the Committee with access to the codes adopted in other states and other helpful reference materials. The Committee also is very grateful to Attorney Deirdre Roney, General Counsel to the Massachusetts State Ethics Commission, for meeting with the Committee and providing guidance concerning the views of the State Ethics Commission on the relationship between the Proposed Code and G. L. c. 268A. The Committee also greatly appreciates the willingness of the members of the Committee on Judicial Ethics and the Commission on Judicial Conduct to meet with the Committee in December, 2014, to receive a briefing on the Committee's work and to provide some initial feedback.

### **Summary of Key Recommendations**

Format and Organization. The Proposed Code adopts the structure of the 2007 Model Code. As in the Current Code, the Canons in the Proposed Code continue to state overarching principles. The number of Canons is reduced from five to four because Canon 1, which sets forth general principles to govern a judge's conduct, replaces former Canons 1 and 2. A set of enforceable black-letter Rules follows each Canon. The Comments that accompany the Rules do not state enforceable obligations, but rather provide interpretive guidance and, occasionally, identify aspirational goals.

Substantive Changes From Current Code. The most significant substantive differences between the Proposed Code and the Current Code are as follows:

#### **Canon 1**

- Judicial Outreach. Proposed Rule 1.2, Comments [4] and [6], explicitly encourage judicial outreach for purposes of improving professionalism within the bench and bar, promoting access to justice, and promoting public confidence in the administration of justice. These Comments expand upon the revisions to Canons 4A and 4B that were made to the Current Code in 2012.
- Judicial Recommendations. Proposed Rule 1.3, Comment [2], states that a judge may provide a recommendation on official letterhead and/or sign it using the judicial title only if the recommendation is based on observations made in the judge's judicial capacity. There is no comparable provision in the Current Code, but the principle is not new.

#### **Canon 2**

- Bias and Harassment. Proposed Rule 2.3(B) and (C) add "or engage in harassment" to the prohibition against a judge's manifestations of bias or prejudice. The Current Code

does not specifically prohibit harassment. The proposed rule also expands the examples of prohibited bias or prejudice to include that based upon gender identity, nationality, ancestry, disease, marital status, or political affiliation. The Comments elaborate on the meaning of harassment, including sexual harassment.

- Self-Represented Litigants. Proposed Rule 2.6(A) expressly permits a judge to make reasonable efforts to facilitate the ability of self-represented litigants to be fairly heard, and a Comment provides examples of permissible accommodations. This is a new topic.
- Settlement. Proposed Rule 2.6(B) continues to permit judges to encourage parties to settle their cases, but now explicitly directs that the judge shall not act in a manner that is coercive.
- Specialty Courts and Sessions. Proposed Rule 2.9(A)(2) provides for an exception to the prohibition against ex parte communications if those communications arise in specialty courts, sessions, or programs, and are authorized by law (defined in the Terminology section to include court rules and standing orders). This is a new topic.
- Inadvertently Received Ex Parte Communication. Proposed Rule 2.9(B) provides that if a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall promptly notify the parties of the substance of the communication. This is a new topic.
- Prohibition Against Independent Investigation. Proposed Rule 2.9(C) prohibits a judge from investigating facts independently. There is no comparable provision in the Current Code, although the principle is not new.
- Disqualification. Proposed Rule 2.11, Comment [2], explains that a judge's obligation to disqualify himself or herself applies whether or not a motion to disqualify has been filed. This provision makes explicit what is implicit in the Current Code.
- Addressing Disability or Impairment of a Lawyer or Another Judge. Proposed Rule 2.14 requires a judge to take appropriate action when the judge has knowledge or reliable information that the performance of a judge or a lawyer is impaired by mental or physical illness or by alcohol or substance abuse. The Current Code requires a judge to take appropriate action only where the impairment has manifested itself in lack of diligence or competence or is evidenced by the violation of an ethical rule that raises a significant question about the judge's or lawyer's honesty, integrity, trustworthiness, or professional fitness.
- Cooperation with Disciplinary Authorities. Proposed Rule 2.16 requires judges to cooperate with disciplinary authorities and prohibits judges from retaliating against those assisting or cooperating with an investigation. There is no comparable provision in the Current Code, although the principle is not new.

### **Canon 3**

- Coercive Activities. Proposed Rules 3.1(B) and (D) explicitly prohibit a judge from engaging in extrajudicial conduct that would appear to a reasonable person to be coercive or that is reasonably likely to lead to recurrent disqualification. This expands the prohibition in the Current Code, which bars judges from participating in membership solicitations that might reasonably be perceived as coercive.
- Reasonable Use of Court Resources in Connection with Extrajudicial Activities. Proposed Rule 3.1(E) permits a judge to make reasonable, lawful use of court resources in connection with activities that concern the law, the legal system, or the administration of justice. There is no comparable provision in the Current Code.
- Proposing Legislation. Proposed Rule 3.2 gives examples of topics a judge may appropriately address with an executive or legislative body or official, and makes it clear that a judge may propose new legislation or amendments to existing legislation as well as comment on new legislation or amendments to existing legislation proposed by others. Permitting a judge to propose or comment on new legislation reverses a prohibition in the Current Code as it has been interpreted by the Committee on Judicial Ethics.
- Testifying as a Character Witness. Proposed Rule 3.3, Comment [4], explains that the prohibition on testifying as a character witness does not preclude a judge from: vouching for the qualifications of judicial applicants or nominees; providing character references for bar applicants; or responding to inquiries from governmental entities, or contractors for such entities, conducting background checks on applicants for public employment. Commentary to the Current Code permits judges to vouch for the qualifications of judicial applicants or nominees, but the specific references to other exceptions are new.
- Use of Nonpublic Information. Proposed Rule 3.5, Comment [2] states that the rule's restrictions on a judge's use of nonpublic information are not intended to limit the judge's ability to act on information acquired in a judicial capacity where necessary to protect the health or safety of the judge or other persons. This is a new topic.
- Membership in Discriminatory Organizations. Proposed Rule 3.6, prohibiting a judge from holding membership in organizations practicing invidious discrimination, expands the list of such organizations to include those that discriminate on the basis of gender identity. Comment [3] to the proposed rule now requires a judge to resign immediately from any organization practicing invidious discrimination.
- Participation in Legal, Educational, Religious, Charitable, Fraternal, or Civic Organizations. Proposed Rule 3.7(A) and associated Comments address the permissible scope of a judge's participation in extrajudicial activities. Notably, a number of activities prohibited under the Current Code are permitted under the Proposed Code, subject to the controlling requirements of Rule 3.1.

- Fundraising Events. Paragraph (A)(6A) permits a judge to serve as a keynote speaker or receive an award or comparable recognition at a fundraising event of an organization, so long as the organization is concerned with the law, the legal system, or the administration of justice and promotes the general interests of the judicial branch or the legal profession, including enhancing the diversity and professionalism of the Bar. A fundraising event is defined as an event for which the organizers' chief objectives include raising money to support the organization's activities beyond the event itself. This provision reverses prohibitions in the Current Code.
- Planning Fundraising. Paragraph (A)(3) permits a judge to participate in internal discussions related to fundraising. If the organization is composed entirely or predominantly of judges, a judge also may plan fundraising and manage and invest the organization's funds. This provision reverses prohibitions in the Current Code.
- Solicitation. Paragraph (A)(4) permits a judge to solicit contributions or members for an organization if the persons solicited are members of the judge's family or judges over whom the judge does not exercise supervisory authority. This provision modifies the provisions pertaining to solicitation in the Current Code.
- Judge's Name on Solicitations. Comment [2] clarifies that Paragraph (A)(4) permits a judge associated with an organization to be identified by name and title on letterhead or other materials used by the organization to solicit donations and members if comparable designations are used for other persons associated with the organization. This provision reverses the prohibition in the Current Code.
- Encouraging Pro Bono Services. Proposed Rule 3.7(B) permits a judge to encourage lawyers to provide pro bono publico legal services. This is a new topic.
- Assisting Minor Children with Fundraising Activities. Proposed Rule 3.7(C) permits a judge to assist the judge's minor children in fundraising activities, so long as the activities are not for the primary or exclusive benefit of the judge's own child. This is a new topic.
- Practicing Law. Proposed Rule 3.10 provides that a judge may give legal advice and review documents for a member of the judge's family, but may not serve as a family member's lawyer in any forum. Proposed Rule 3.10 also permits a judge to serve as a judge advocate general in the military. These are new topics.
- Accepting Gifts or Other Benefits. Proposed Rule 3.13 modifies the current rules concerning the acceptance of gifts or other benefits. Acceptance of a gift is never allowed if it is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. In other circumstances, gifts or other benefits may be accepted, but except in identified situations, disclosure is required. The rule expands the list of gifts that may be accepted without disclosure, but where disclosure is required, the rule uses the "substantial value" threshold defined in

regulations promulgated under the Massachusetts conflict of interest law, G. L. c. 268A. Of particular note is the treatment of the following types of gifts:

- Gifts Incident to Public Recognition. This type of gift must be disclosed if it is of "substantial value." (As of this writing, "substantial value" is defined as \$50 or more. See 930 Code of Massachusetts Regulations 5.05.) Currently, such gifts are reported to the Supreme Judicial Court on the judge's annual Public Report of Extra-Judicial Income only if the value of the gift exceeds \$350.
- Invitations to Attend Without Charge Dinners, Award Ceremonies, and Similar Events of Bar Associations and Law-Related Non-profit Organizations. Acceptance is permitted and disclosure is not required. A judge is no longer required to obtain a determination by the Chief Justice of the court on which the judge sits that the invitation serves a legitimate public purpose, as such invitations are presumed to do so. A judge's spouse, domestic partner, or guest generally is not permitted to attend without charge, although Comment [8] recognizes that there may be occasions when it would be appropriate for a judge to accept a complimentary invitation to be used by a spouse, domestic partner or other guest. In such instances, disclosure is required if the complimentary invitation is of "substantial value." The Current Code requires disclosure only if the value of the invitation exceeds \$350.
- Discounted or Free Membership to Bar Associations or Other Law-Related Non-Profit Organizations. Acceptance is permitted and disclosure is not required. This is a new topic.
- Gifts of Free or Discounted Attorneys' Fees. Acceptance without disclosure is permitted if the lawyer providing the legal services and all the firm's lawyers are relatives or close personal friends of the judge. Because a gift of legal services is a gift from the firm, a different analysis applies when legal services are provided by a lawyer who works at a firm where not all of the firm's lawyers are relatives or close personal friends of the judge. In such instances, a judge may accept the services only if the same benefit is extended to non-judges in comparable circumstances, and if the lawyer, the lawyer's firm, and their interests are not before the judge, have not been before the judge in the reasonably recent past, and are unlikely to come before the judge in the reasonably near future. Additionally, if the legal services may be accepted, disclosure is required. This is a new topic.
- Reimbursements of Expenses and Waivers of Fees and Charges. Proposed Rule 3.14 provides that, when offered the opportunity to attend certain types of events and receive reimbursement of expenses or waiver of fees or charges, a judge must notify the Chief Justice of the court on which the judge sits and obtain a determination that acceptance serves a legitimate public purpose. There is no comparable provision in the Current Code, but the proposed rule is consistent with current practice pursuant to the Massachusetts conflict of interest law.



- Reporting Requirements. Proposed Rule 3.15 requires that a judge shall annually complete the Public Report of Extra-Judicial Income and the Statement of Financial Interests, but explicitly states that any further disclosure is unnecessary when a judge accepts a waiver or reimbursement of expenses for attending a dinner, award ceremony, seminar, or other similar event of a bar association or other non-profit organization concerned with the law, the legal system, or the administration of justice. The statement that further disclosure is unnecessary is a new topic.

### **Discussion and Explanation**

This section of the Report compares each provision of the Proposed Code with both the 2007 Model Code and the Current Code and identifies substantive differences. Where the Committee has proposed adoption of a provision of the 2007 Model Code, it has done so after independent review, based upon the rationale stated in the Reporters' Notes to the 2007 Model Code. Where the Committee has proposed retaining a provision of the Current Code that deviates from the 2007 Model Code, it has done so after making a determination that the Current Code offers more appropriate guidance for Massachusetts judges, e.g., because Massachusetts judges are not elected or subject to any reappointment procedure. In those instances where the Committee's recommendations substantively depart from both the Current Code and the 2007 Model Code, this Report provides more expansive explanation of the Committee's rationale. To the extent that topics addressed by advisory opinions construing the Current Code are treated differently in the Proposed Code, the intent of the Committee is for the Proposed Code to supersede those opinions.

### **Preamble**

#### Comparison to 2007 Model Code

The Preamble to the Proposed Code is largely consistent with the 2007 Model Code, which contains new language emphasizing that, at all times, judges should aspire to conduct that will ensure the greatest possible public confidence in judges' independence, integrity, impartiality, and competence. The Committee made two substantive modifications: (i) judges are described as "persons" of integrity, rather than "men and women" of integrity to avoid unnecessary emphasis on gender and account for transgender persons, and (ii) because Massachusetts judges are not elected, references to judicial candidates are omitted here and throughout the Proposed Code.

#### Comparison to Current Code

Unlike the Current Code, the Preamble to the Proposed Code separates the Preamble into two sections -- Preamble and Scope. The Preamble to the Proposed Code is limited to a description of the general purpose and rationale of the Proposed Code. Much of the language in this section corresponds to language in the Current Code, but the structure of the Proposed Code is now explained in the new Scope section. These changes conform the structure of the Proposed Code to that of the 2007 Model Code.

## **Scope**

### **Comparison to 2007 Model Code**

The Scope section in the Proposed Code is largely consistent with the language of the 2007 Model Code, and explains the relationship among the Canons, Rules (formerly "Sections"), and Comments (formerly "Commentary"). Canons state overarching principles, and Rules articulate enforceable standards. Comments serve two functions. Comments usually provide guidance regarding the purpose, meaning, and proper application of the Rules, but in several instances Comments identify aspirational goals. The Proposed Code also adds a sentence to Comment [6], derived from the Preamble to the Current Code, to clarify that some conduct that may literally violate a Rule may not warrant discipline because the violation may not contravene the policy behind a prohibition or may be de minimis.

### **Comparison to Current Code**

The Scope section is new, but corresponds to provisions in the Current Code that explain its structure. As previously noted, the Proposed Code establishes a more direct connection between Rules and Comments than exists between Sections and Commentary in the Current Code.

## **Terminology**

### **Comparison to 2007 Model Code**

The Proposed Code omits several terms that are defined in the 2007 Model Code: "aggregate," "appropriate authority," "contribution," "de minimis," "judicial candidate," "member of the candidate's family," "personally solicit," and "public election." The Committee omitted most of these definitions because they predominantly or exclusively pertain to rules regulating judicial elections. "Appropriate authority" is deleted because the Proposed Code explicitly identifies the pertinent authority where applicable. "De minimis," which is defined in the 2007 Model Code only in the context of interests pertaining to disqualification, is deleted because it is used in the Proposed Code in additional contexts and is a well understood term.

The Proposed Code defines the term "court personnel" and uses it in lieu of the undefined phrase "court officials and court staff" that is used throughout the 2007 Model Code. The Proposed Code also includes several newly-defined terms. "Close personal friend" is defined because this term is relevant to the rules governing disqualification and the acceptance of gifts. "Fundraising event" is defined because this term is integral to distinctions made in Proposed Rule 3.7. "Judicial applicant" and "judicial nominee" are defined, as several rules or comments refer to such individuals.

The Proposed Code modifies the definitions of several other terms. "Impartial" is expanded to require the absence of bias or prejudice in favor of or against parties' representatives. For clarification, a second sentence is added to the definition of "impending matter." "Impropriety" is defined to mean conduct that violates the law (including the Code), as

well as conduct that constitutes grounds for discipline under G. L. c. 211C, § 2(5). The definition of "law" is expanded to include standing orders of the courts. In addition, for purposes of the Code, "law" specifically excludes any provisions of c. 268A, §§ 3 and 23(b)(2) - (3) that are inconsistent with the provisions of this Code. As discussed below in relation to Rule 3.13, the provisions of this Code supersede and supplant inconsistent provisions of c. 268A related to gifts.

In the definition of "member of the judge's family," the term "familial" is replaced by "family-like" to make it clear that a blood relationship is not required. In addition, a new sentence notes that residence in the judge's household may be relevant, but not dispositive, when determining whether a judge maintains a close family-like relationship with an "other relative or person." "Member of a judge's family residing in the judge's household" is expanded to include domestic partners and relatives by adoption. "Nonpublic information" is clarified and expanded to include information that is expunged. "Political organization" is revised to include groups working to pass or defeat ballot questions.

### Comparison to Current Code

Several terms defined in the Current Code are not defined in the Proposed Code. "De minimis" is no longer defined because it is a well understood term and used in contexts additional to those in the Current Code. "Ex parte communication" is not included in the Terminology section, but is defined in Rule 2.9, which is the only place where that term is used. Consistent with the 2007 Model Code, "require" is no longer defined, as it is a well understood term. The Proposed Code does not define "relationship interest," as that term was not defined in either the 1990 ABA Model Code or the 2007 Model Code.

The following terms have been added to the Terminology section: "close personal friend" "domestic partner," "fundraising event," "impartial," "impending matter," "impropriety," "independence," "integrity," "judicial applicant," "judicial nominee," "member of the judge's family," "nonpublic information," and "pending matter." "Court personnel" remains defined in the Proposed Code, but the definition has been simplified to court employees "subject to the judge's direction and control." Throughout the Proposed Code, the defined term "court personnel" replaces the 2007 Model Code's references to "court officials and court staff." As noted above, definitions of many other terms are revised to be consistent or largely consistent with the definitions used in the 2007 Model Code.

### **Application**

#### Comparison to 2007 Model Code

Because the references in the 2007 Model Code to part-time judges and administrative law judges are inapplicable in Massachusetts, the Committee adapted Canon 6 of the Current Code to describe those subject to the Proposed Code.

### Comparison to Current Code

The Application Section of the Proposed Code corresponds to Canon 6 of the Current Code, and tracks its provisions relating to retired judges and time for compliance for newly-appointed judges. Consistent with G. L. c. 211C, § 2(2), which identifies those persons subject to the jurisdiction of the Commission on Judicial Conduct, the Proposed Code defines active judges as any judge serving on the Trial Court, the Appeals Court, and the Supreme Judicial Court until resignation, removal, or retirement. Also consistent with that statute, a new comment informs judges that their conduct prior to assuming judicial office may have disciplinary consequences under the law. Other new comments clarify that (i) an active judge who becomes an applicant or nominee for a different judicial office must comply with the requirements of both the Code and the appointing authority, and (ii) although judicial applicants and judicial nominees are not governed by the Code, the Governor of the Commonwealth historically has used an Executive Order to impose a code of conduct upon such individuals.

### **Canon 1 - A Judge Shall Uphold and Promote the Independence, Integrity, and Impartiality of the Judiciary, and Shall Avoid Impropriety and the Appearance of Impropriety.**

### Comparison to 2007 Model Code

Canon 1 is adopted from the 2007 Model Code without modification.

### Comparison to Current Code

Proposed Canon 1 corresponds to Canons 1 and 2 of the Current Code. It addresses both the obligation to uphold the independence, integrity, and impartiality of the judiciary (Current Canon 1) and the duty to avoid impropriety and the appearance of impropriety (Current Canon 2). The term "impartiality" is added to integrity and independence in Proposed Canon 1 and throughout the Proposed Code to emphasize its importance as an overarching principle. Proposed Canon 1 also requires a judge to promote, as well as uphold, the fundamental values of the judiciary.

### **Rule 1.1 - Compliance with the Law**

### Comparison to 2007 Model Code

Rule 1.1 is adopted from the 2007 Model Code without modification.

### Comparison to Current Code

Rule 1.1 corresponds to the first clause of Canon 2A of the Current Code. Consistent with the 2007 Model Code, the reference to a judge's duty to respect the law is deleted.

## **Rule 1.2 - Promoting Confidence in the Judiciary**

### **Comparison to 2007 Model Code**

Rule 1.2 and Comments [1] – [3] are adopted from the 2007 Model Code without modification. In Comments [4] and [6], the Committee replaced "should" with "are encouraged to," and in Comment [6], the Committee added "appropriate" before "community outreach activities." These changes emphasize that judges are affirmatively encouraged (but not obliged) to engage in community outreach, and that engagement in any particular activity is subject to the provisions of the Code. In Comment [5], the Committee clarified that improprieties include conduct for which a judge may be disciplined pursuant to G. L. c. 211C, § 2(5).

### **Comparison to Current Code**

Rule 1.2 corresponds to Canon 2 and the first clause of Canon 2A of the Current Code. Comments [1] – [3] and [5] correspond to the Commentary to Canon 2A of the Current Code. Comments [4] and [6] are new, and reflect the 2007 Model Code's recognition that it is desirable for judges to participate in extrajudicial activities that will promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, promote access to justice for all, and promote public understanding of and confidence in the administration of justice.

## **Rule 1.3 - Avoiding the Abuse of Judicial Office**

### **Comparison to 2007 Model Code**

Rule 1.3 is adopted from the 2007 Model Code without modification. Proposed Comments [2] and [3] are different from the model comments. After considerable discussion concerning when judges should be permitted to use official letterhead and/or the judicial title in written recommendations, the Committee revised Comment [2] to be generally consistent with State Ethics Commission Advisory Opinion 13-1. The Committee concluded that a judge should be permitted to use official letterhead or court email for a recommendation, or to sign a recommendation using the judicial title, only if the recommendation is based on observations made in the judge's judicial capacity. Where a judge's knowledge of the applicant's qualifications do not arise from observations made in the judge's judicial capacity, the judge may not use official letterhead, court email, or the judicial title, but the judge may send a private letter and may refer to the judge's current position and title in the body of that letter if that information is relevant to some substantive aspect of the recommendation. Comment [2] also reminds judges that other restrictions may pertain to recommendations for employment in the judicial branch or state government.

The Committee modified Comment [3], relating to recommendations for persons being considered for judicial office, to address various aspects of the judicial selection process in Massachusetts.

### Comparison to Current Code

Rule 1.3 and its Comments correspond to the Current Code's Canon 2B and associated Commentary. The Proposed Rule substitutes the phrase "abuse the prestige of judicial office" for "lend" to more accurately describe the prohibited conduct, and adds prohibitions against a judge's advancing economic as well as personal interests, and against allowing others to abuse the prestige of judicial office. The Current Code does not address the use of letterhead in writing recommendations, but cautions judges to be sensitive to possible abuse of the prestige of judicial office.

### **Canon 2 - A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently.**

### Comparison to 2007 Model Code

Canon 2 is adopted from the 2007 Model Code without modification.

### Comparison to Current Code

Canon 2 corresponds to Canon 3 of the Current Code, but adds an explicit requirement that the judge perform the duties of judicial office competently. Canon 3B(2) of the Current Code touches on competence only by requiring that judges maintain professional competence in the law.

### **Rule 2.1 - Giving Precedence to the Duties of Judicial Office**

### Comparison to 2007 Model Code

Rule 2.1 and Comments [1] and [2] are adopted from the 2007 Model Code without modification. The Committee added new Comment [3] to emphasize that a rule of reasonableness should govern disciplinary proceedings under this Rule, and to recognize that there may be occasions where family obligations, illnesses and emergencies require a judge's immediate attention.

### Comparison to Current Code

Rule 2.1 corresponds to Canon 3A of the Current Code. To track the Model Code, the Committee replaced "judicial duties" with "duties of judicial office," used in the Current Code. Here and throughout the Proposed Code, references to duties of judicial office or a judge's judicial duties are intended to include a judge's adjudicative duties and administrative responsibilities. The Comments are new.

## **Rule 2.2 - Impartiality and Fairness**

### **Comparison to 2007 Model Code**

Rule 2.2 and Comments [1] and [2] are adopted from the 2007 Model Code without modification. Comment [3] is modified to clarify that a judge whose judicial decision or action is later found by an appellate court to be incorrect or an abuse of discretion has not violated the Code unless the judge has acted in bad faith. Comment [4] is modified to substitute "self-represented" for "pro se" and to add a cross-reference to Rule 2.6(A). As explained below, the Committee determined that Rule 2.6(A), which ensures the right to be heard, was the appropriate place to include further guidance on the topic of self-represented litigants.

### **Comparison to Current Code**

Rule 2.2 corresponds to Canons 3B(2) and 3B(8) of the Current Code. Comment [3] corresponds to the Commentary to Canon 1A of the Current Code. Other comments are new.

## **Rule 2.3 - Bias, Prejudice and Harassment**

### **Comparison to 2007 Model Code**

Rule 2.3 is adopted without substantial modification from the 2007 Model Code. In both the Rule and in Comment [3], the Committee chose to include additional guidance by expanding the examples of prohibited bias, prejudice, or harassment to include that based upon gender identity, nationality, and disease.

### **Comparison to Current Code**

Rule 2.3 corresponds to Canons 3B(5) and (6), but the prohibition against sexual harassment is new. The examples of prohibited bias, prejudice, or harassment are expanded to include that based upon gender identity, nationality, ancestry, disease, marital status, and political affiliation. Comments [1] and [2] correspond to the Commentary to Canon 3B(5), but a sentence is added to Comment [1] to underscore that the rule does not preclude a judge from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding. Comments [3] and [4] are new. Comment [3] defines harassment, and Comment [4] elaborates on the meaning of sexual harassment.

## **Rule 2.4 - External Influences on Judicial Conduct**

### **Comparison to 2007 Model Code**

Rule 2.4 and its Comments are adopted without modification except that the term "partisan interests," which is found in Canon 3B(2) of the Current Code, is added to the list of potential influences identified in Paragraph (A).

### Comparison to Current Code

Rule 2.4 corresponds to current Canons 2B and 3B(2). The Proposed Code adds financial interests or relationships to the list of potential influences identified in Paragraph (B). New Comment [1] underscores the general purpose of the Rule by linking the judge's duty not to be swayed by inappropriate outside influences to the judge's obligation to decide cases based on the law and the facts.

### **Rule 2.5 - Competence, Diligence, and Cooperation**

#### Comparison to 2007 Model Code

Rule 2.5 is adopted from the Model Code without modification. Comments are adopted without substantial modification.

#### Comparison to Current Code

Rule 2.5 corresponds to Canons 3B(2), 3B(8) and 3C(1). The Proposed Code places in a single location a judge's obligation to perform all judicial duties competently and diligently. Comments [1] and [2] are new. Comment [1] underscores the importance of competence, while Comment [2] emphasizes that judges should seek the resources to carry out their adjudicative and administrative responsibilities. Comments [3] and [4] correspond to the Commentary to Canon 3B(8).

### **Rule 2.6 - Ensuring the Right to Be Heard**

#### Comparison to 2007 Model Code

In Rule 2.6, the first sentence of Paragraph (A) and all of Paragraph (B) are adopted from the 2007 Model Code without modification. The Proposed Code adds a sentence to Paragraph (A) that comports with a July 25, 2012, resolution by the Conference of Chief Justices and the Conference of State Court Administrators recommending that states amend their codes of judicial conduct to include a rule that "a judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." The resolution also suggested that states include comments consistent with local rules and practice "regarding specific actions judges can take to exercise their discretion in cases involving self-represented litigants."<sup>5</sup>

The Committee appointed a subcommittee to consider whether and where to place such a rule in the Proposed Code, and the scope and content of any accompanying comment. The subcommittee proposed, and the Committee agreed, that the Proposed Code should contain the

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<sup>5</sup> The complete language of the resolution and the modifications made by various states as of March, 2013, are available on the ABA website at:  
[http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_atj\\_judicial\\_conduct\\_codes.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_judicial_conduct_codes.authcheckdam.pdf).



following rule: "A judge may make reasonable efforts, consistent with the law, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." Because "law" is defined in the Proposed Code as including court rules, this language is identical to that recommended in the resolution. In accordance with the subcommittee's recommendation, the Committee also decided that the most appropriate place for the rule was in Rule 2.6(A), which ensures the right to be heard.

After careful examination of comments adopted in other jurisdictions, and consultation with others, including the Special Advisor to the Trial Court on Access to Justice Initiatives, the subcommittee recommended the inclusion of an expansive comment. Proposed Comment [1A], explains that the judge has an affirmative role to play in ensuring the right to be heard and, in the interest of ensuring fairness and access to justice, may make reasonable accommodations to persons with a legal interest in the proceedings. It also reminds judges that they should be careful that accommodations do not give self-represented litigants an unfair advantage or create an appearance of judicial partiality. Proposed Comment [1A] explains further that, in some circumstances, particular accommodations for self-represented litigants are required by decisional or other law, and that, in other circumstances, accommodations are within the judge's discretion. Based upon comments adopted in other jurisdictions -- most particularly the District of Columbia -- Comment [1A] then provides seven illustrative examples of permissible discretionary accommodations. Comment [1A] also references the Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants (2006) as a useful resource in civil cases.

Comment [2] pertaining to a judge's role in settlement efforts, differs in two respects from the 2007 Model Code: it expressly states that a judge's participation in settlement discussions must be conducted in accordance with applicable law, and it expands the list of factors a judge should consider when deciding upon an appropriate settlement practice to include "whether there is a history of violence between the parties."

#### Comparison to Current Code

Rule 2.6(A) corresponds to Canon 3B(7), but the reference to self-represented litigants is new. Comments [1] and [1A] are new. Rule 2.6(B) is new, as are Comments [2] and [3].

### **Rule 2.7 - Responsibility to Decide**

#### Comparison to 2007 Model Code

Rule 2.7 and its comment are adopted from the 2007 Model Code without modification.

#### Comparison to Current Code

Rule 2.7 corresponds to Canon 3B(1) and its Commentary. Comment [1] is new. The Committee decided not to carry over the Commentary to Canon 3B(1) stating that judges may request "not to be assigned to a particular case or class of cases because of strongly held personal or moral beliefs." After extensive discussion, the Committee concluded that the 2007 Model Code appropriately expresses the expectation that judges will hear and decide all assigned

matters except where disqualification is required. The Committee noted that Rule 2.11(A) of the 2007 Model Code requires disqualification whenever the judge's impartiality might reasonably be questioned, even if the particular ground is not among those specifically listed in that rule.

### **Rule 2.8 - Decorum, Demeanor, and Communication with Jurors**

#### **Comparison to 2007 Model Code**

Rule 2.8 is adopted from the 2007 Model Code with the addition of a clause to Paragraph (C) expressly permitting judges to express appreciation to jurors for their service. A new sentence is added to Comment [2] to highlight that a judge's commendations or criticisms of a jury verdict may call into question the judge's ability to rule impartially on any post-trial motions or on remand.

#### **Comparison to Current Code**

Rule 2.8 corresponds to Canons 3B(3), 3B(4), and 3B(10) of the Current Code. The clause in Paragraph (C) permitting judges to express appreciation to jurors is carried over from Canon 3B(10) of the Current Code. Comments [1] and [2] correspond to the Commentary to Canons 3B(4) and 3B(10), respectively. Comment [3] is new.

### **Rule 2.9 - Ex Parte Communications**

#### **Comparison to 2007 Model Code**

Rule 2.9 is substantially different from the 2007 Model Code in several respects. The Committee deliberately omitted Paragraph (A)(2) from the Proposed Code. This provision, which permits a judge to obtain the written advice of a disinterested expert, was in the 1990 ABA Model Code but was not adopted by Massachusetts and does not appear in the Current Code. The Committee agreed that this provision remains contrary to Massachusetts law and practice.

The Proposed Code includes a new Paragraph (A)(2), which permits a judge to engage in ex parte communications in specialty courts, sessions, or programs, as authorized by law (defined to include court rules and standing orders). (The 2007 Model Code refers to such courts, sessions, or programs as "problem solving courts.") In the 2007 Model Code, this issue is addressed only in Comment [4]. The Committee concluded that, in view of the growing number and importance of specialty courts, it was preferable to address this topic in the rule itself. Before arriving at this conclusion, the Committee appointed and received the recommendations of a subcommittee that surveyed the rules and protocols currently governing specialty courts and programs in Massachusetts, including drug courts, mental health courts, veteran's courts, and tenancy preservation programs. Representatives of the Committee also consulted with the Chief Justice of the Trial Court.

The Committee also decided not to adopt the 2007 Model Code's iteration of Paragraph (A)(3). Instead, the Committee substantially revised this paragraph to retain the detailed

provisions contained in the Current Code's Canon 3B(7)(c), as these provisions give additional guidance and conform to Massachusetts practice.

Rule 2.9 (A)(4) is modified from its model counterpart by adding "civil" to clarify that it relates only to civil and not criminal cases. In addition, the final clause is eliminated from Paragraph (B) to allow the judge discretion to decide whether the parties should have an opportunity to respond when a judge inadvertently receives an unauthorized ex parte communication. The Committee was of the opinion that, depending on the circumstances, it may be adequate for the judge simply to inform the parties.

New Comment [1A] defines ex parte communication. This definition is unchanged from the Current Code. Because it appears only in Rule 2.9, the definition appears here rather than in the Terminology section. Comment [2] is modified to make clear that a court rule might require notice to both the party and the party's attorney in certain circumstances. Comment [4] clarifies that where the law permits ex parte communications in specialty courts, sessions, or programs, a judge may attend and assume an interactive role in "staffings" and other meetings. Comment [4A] clarifies that where permitted by law, judges in specialty courts, sessions, or programs may consult with probation officers, housing specialists and other court employees.

Comment [5] includes the specific guidance contained in Canon 3B(7)(c) of the Current Code. Comment [6] is modified to emphasize that the prohibition against a judge's independent factual investigation of facts applies equally to all types of media, including electronic media. Comment [7] is modified to include the names of the relevant ethics advisory bodies in Massachusetts (the Committee on Judicial Ethics and the State Ethics Commission).

#### Comparison to Current Code

Rule 2.9(A) of the Proposed Code corresponds to Canon 3B(7) of the Current Code. However, the Committee modified the Current Code to clarify that the law governing specialty courts, sessions, or programs may provide an exception to the prohibition on ex parte conversations with probation officers. Paragraph (B) corresponds to the Commentary to Canon 3B(7)(c) and addresses inadvertent disclosures of ex parte information, such as misaddressed emails. Paragraph (C), the prohibition against independent investigation, also corresponds to the Commentary to Canon 3B(7)(c). Paragraph (D) corresponds to the Commentary to Canon 3B(7) of the Current Code.

Comments [1], [2], [3], and [5] correspond to the Commentary to Canon 3B(7) of the Current Code. Comment [1A] relocates the definition of "ex parte communication," which is unchanged from the Current Code, to this Comment. Comment [4], which addresses issues concerning ex parte conversations in specialty courts, sessions, or programs, is new. Comment [4A], which explains when a judge may consult ex parte with a probation officer, distinguishes between the broader permission that may be allowed in specialty courts and the more limited permission otherwise allowed. Comments [6] and [7] are new.

## **Rule 2.10 - Judicial Statements on Pending and Impending Cases**

### **Comparison to 2007 Model Code**

Effective January 1, 2010, the Supreme Judicial Court amended the Current Code to include new Canon 3B(9) as well as a Guidance Regarding the Issuance of Explanatory Memoranda (Appendix A to the Current Code). The Committee agreed that the Proposed Code should retain nearly all of the substance of Section 3B(9) and the Guidance. Hence, while the Proposed Code's iteration of Rule 2.10 incorporates the structure and some of the language contained in the 2007 Model Code, it differs substantially from the 2007 Model Code. The rationale for Canon 3(B)(9) was explained at the time of its adoption.

### **Comparison to Current Code**

Rule 2.10 of the Proposed Code and associated Comments largely incorporate the substance of Canon 3B(9) of the Current Code, including the Guidance Regarding the Issuance of Explanatory Memoranda. The Proposed Code rephrases and clarifies the thrust of Canon 3B(9)(d) in Rule 2.10(E), which states that a judge may respond directly or through a third party to public criticisms of the judge's behavior, but shall not respond to public criticisms of the substance of the judge's rulings other than by making statements that explain the procedures of the court, general legal principles, or what may be learned from the public record in a case.

While Rule 2.10(F) corresponds to Canon 3B(9)(c), the Committee concluded that cases pending or impending in any court, and not just an appellate court, may raise important issues about which it is appropriate for a judge to lecture or write for educational purposes. Accordingly, subject to the overarching prohibition in Rule 2.10 (A) ("a judge shall not make any statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any Massachusetts court"), Paragraph (F) permits a judge to comment in legal education programs and materials, scholarly presentations and related materials, or learned treatises, academic journals, and bar publications upon issues in matters pending or impending at all court levels, so long as those matters are not pending or impending before the judge.

The Comments to Rule 2.10 correspond to the Commentary to Canon 3B(9). The Guidance Regarding the Issuance of Explanatory Memoranda (Appendix A to the Current Code) is incorporated in Comment [10].

## **Rule 2.11 - Disqualification**

### **Comparison to 2007 Model Code**

Rule 2.11 is adopted from the 2007 Model Code with the following modifications. Paragraph (A)(4) is deleted, as Massachusetts does not elect its judges. Paragraph (A)(5) is renumbered as Paragraph (A)(4) and is modified to clarify that it applies to statements made by a judge while a judicial applicant, judicial nominee, or judge. Paragraph (A)(6) is renumbered as Paragraph (A)(5). Paragraph (C) is revised to incorporate the substance of the remittal procedure

in Canon 3F of the Current Code. Comment [1] is modified to provide an example of when a judge's impartiality might reasonably be questioned, even if none of the provisions of Paragraphs (A)(1) - (A)(5) applies. The example addresses a judge's obligations to disqualify himself or herself when the judge has been a client of a party's lawyer or the lawyer's firm. Comment [4] is modified to emphasize the broad scope of the analysis required to determine whether a judge's impartiality reasonably would be questioned. Comment [6] is deleted because "economic interest" is defined in the Terminology section. Taking its place as Comment [6] is a provision explaining that the filing of a judicial discipline complaint against the judge does not itself require disqualification, and that the decision to disqualify must be resolved on a case-by-case basis.

#### Comparison to Current Code

Rule 2.11 corresponds to Canons 3E and 3F. Paragraph (A)(5)(b) is more expansive than the Commentary to Canon 3E, and Paragraph (A)(5)(d), which precludes a judge from hearing on appeal a case that he or she previously heard in another court, is new. Paragraph (C) makes explicit the previously implicit requirement that the consultation must be free from coercion, express or implied. The Comments correspond to the Commentary to Canons 3E and 3F. The example in Comment [1] is new, as is Comment [2], which clarifies that a judge's obligation not to hear or decide matters when disqualification is required applies whether or not a motion to disqualify has been filed.

#### **Rule 2.12 - Supervisory Duties**

##### Comparison to 2007 Model Code

Rule 2.12 is adopted from the Model Code without any substantial modifications.

##### Comparison to Current Code

Rule 2.12 corresponds to Canons 3C(2) and 3C(3). The Comments are new. Comment [1] underscores that judges may never direct court personnel or others within the judge's control to act inconsistently with the Code. Comment [2] emphasizes the close connection between public confidence in the judicial system and the timely administration of justice.

#### **Rule 2.13 - Administrative Appointments**

##### Comparison to 2007 Model Code

Rule 2.13(A) is adopted from the Model Code without modification. Rule 2.13(B) is deleted because it pertains to judicial elections. Rule 2.13(B) is Rule 2.13(C) of the Model Code. Comment [1] is modified to give examples of the types of appointments that a Massachusetts judge may be called upon to make and to assure judges that compliance with court rules pertaining to fee-generating appointments will satisfy their obligations under this rule. Comment [2] is amended to contain a reference to the Trial Court Personnel Policies and Procedures Manual. Comment [3] is deleted, as it pertains to judicial elections.

### Comparison to Current Code

Rule 2.13 corresponds to Canon 3C(4). Comment [2], which defines nepotism, is new.

## **Rule 2.14 - Disability and Impairment**

### Comparison to 2007 Model Code

Rule 2.14 is adopted from the 2007 Model Code without modification. A new sentence is added to Comment [1] to make clear that it is part of a judge's judicial duties to take appropriate action to address the disability or impairment of a lawyer or another judge. Comment [2] is modified by deleting the last clause, as the reference to Rule 2.15 suffices.

### Comparison to Current Code

This is a new Rule. It is designed to foster public confidence in the administration of justice by requiring judges to take appropriate action whenever the judge has a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol or by a mental, emotional, or physical condition. Previously, the Code addressed impairment in Canon 3D and required judicial action only where the impairment had manifested itself in lack of diligence or competence, or was evidenced by the violation of an ethical rule raising a significant question about the judge's or lawyer's honesty, integrity, trustworthiness, or professional fitness.

## **Rule 2.15 - Responding to Judicial and Lawyer Misconduct**

### Comparison to ABA Model Code

Rule 2.15 is adopted from the 2007 Model Code with the following modifications. Paragraphs (A) and (B) are modified to include "integrity." Paragraph (A) is also modified to provide that the appropriate authorities to receive the information are the Chief Justice of the Supreme Judicial Court, the Chief Justice of the court on which the judge sits, and the Chief Justice of the Trial Court, if the judge in question serves on the Trial Court.<sup>6</sup> Paragraph (B) is modified to provide that the appropriate authority is the Office of Bar Counsel. Paragraphs (C) and (D) are modified to require that the information received by the judge must be credible.

Comment [1] is modified to permit a judge to defer making a report of a lawyer's misconduct until a matter is concluded, in instances where no person will be harmed by the delay. Comment [2] is modified to provide a more comprehensive list of "appropriate actions."

### Comparison to Current Code

Rule 2.15 corresponds to Canon 3D.

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<sup>6</sup> The Committee was informed that the Chief Justice of the Supreme Judicial Court routinely forwards reports of alleged misconduct to the Commission on Judicial Conduct.

## **Rule 2.16 - Cooperation with Disciplinary Authorities**

### **Comparison to 2007 Model Code**

Rule 2.16 and its Comment are adopted from the 2007 Model Code without modification.

### **Comparison to Current Code**

Rule 2.16 and its Comment are new. Rule 2.16 requires judges to cooperate with disciplinary agencies and prohibits judges from retaliating against a person assisting or cooperating with an investigation. Comment [1] underscores that judicial cooperation in disciplinary processes protects the public and increases public confidence in the courts.

## **Canon 3 - A Judge Shall Conduct the Judge's Personal and Extrajudicial Activities to Minimize the Risk of Conflict with the Obligations of Judicial Office.**

### **Comparison to 2007 Model Code**

Canon 3 is adopted from the 2007 Model Code without modification.

### **Comparison to Current Code**

Canon 3 corresponds to Canon 4 of the Current Code. The word "personal" is added to make the Canon more complete and accurate.

## **Rule 3.1 - Extrajudicial Activities in General**

### **Comparison to 2007 Model Code**

The Committee appointed a subcommittee to consider the many issues raised by Model Rules 3.1 and 3.7, which address a judge's participation in extrajudicial activities. After much study and lengthy debate, the subcommittee recommended, and the Committee adopted Rule 3.1 in a form that is largely consistent with Model Rule 3.1. Paragraphs (A) and (B) of Rule 3.1 are modified to replace "will" with "are reasonably likely to," as a judge should refrain from participation not only in activities that are certain to interfere with the proper performance of the judge's judicial duties or to lead to recurrent disqualification, but also in activities that are reasonably likely to do so. The Committee replaced "frequent" with "recurrent" in Paragraph (B) because frequent is vague, and the crucial consideration is whether participation is reasonably likely to lead to the judge's repeated disqualification due to the nature of the activity or the organization. Paragraph (E) is modified to expressly permit reasonable use of court resources for extrajudicial activities so long as the use is not prohibited by law, and the activity concerns the law, the legal system, or the administration of justice.

The Comments are mostly, but not entirely taken from the Comments in the 2007 Model Code. Model Comments [1] and [2], which encourage judges to engage in appropriate extrajudicial activities, have been combined. A new Comment [2] reiterates the importance of a

judge avoiding activities that are reasonably likely to interfere with the obligations of judicial office. Comment [3], which explains that discriminatory conduct will violate the precepts of the code even if it occurs outside the judge's official or judicial actions, is expanded to include examples consistent with Rule 2.3, and Comment [4] contains a new example to illustrate coercive conduct.

#### Comparison to Current Code

Rule 3.1(A) – (D) corresponds to Canon 4A, but the factors bearing on the propriety of engaging in an extrajudicial activity are expanded to take into account the likelihood of recurrent disqualification, the potential for interference with judicial integrity and independence, and the need to avoid coercive conduct. Paragraph (E) is new. Comments [1] and [3] are adopted from the Commentary to Canons 4A and 4B, as amended effective January 1, 2013. Comments [2] and [4] are new.

### **Rule 3.2 - Appearances before Governmental Bodies and Consultation with Government Officials**

#### Comparison to 2007 Model Code

Rule 3.2 and its Comments are adopted from the 2007 Model Code with the following modifications. Paragraph (B), which was a new provision added to the Model Code, is not adopted in the Proposed Code. The Committee concluded that permitting a judge to voluntarily appear before a governmental body or consult with an executive or legislative body or official for the purpose of sharing information or insights that the judge gained in carrying out judicial duties was too loose a standard. The first sentence of Comment [1] is expanded to clarify that a judge may propose new legislation, comment on new legislation proposed by others, or propose or comment on amendments to existing law. Additionally, a new sentence is added to Comment [1] to give examples of topics related to the law, the legal system, and the administration of justice that a judge might properly address with governmental bodies and executive or legislative branch officials.

#### Comparison to Current Code

Rule 3.2 corresponds to Canon 4C(1) with the following modifications. "Voluntary" is added to clarify that judges must appear if formally summoned. The scope of the exception for a judge's pro se appearances is extended to situations where the judge is acting in a fiduciary capacity. The Comments are new. Comment [1] is intended to reverse the Commentary to Section 4B of the Current Code to the extent it prohibits judges from proposing new legislation or commenting on new legislation proposed by others. See, CJE Opinion No. 2014-4. The list of examples in Comment [1] is intended to indicate the types of topics that a judge may appropriately address.



### **Rule 3.3 - Testifying as a Character Witness**

#### **Comparison to 2007 Model Code**

Rule 3.3 is adopted from the 2007 Model Code without modification. Comment [1] is adopted without modification, except that "lends" replaces "abuses" to be consistent with Rule 1.3. Comments [2] – [4] are new, and provide exceptions permitting a judge to comment upon the character of an applicant or nominee for judicial or court-related office, to provide a character reference for a bar applicant based on the judge's personal knowledge, and to respond based on personal knowledge to an official inquiry in connection with a background investigation related to public employment or a security clearance.

#### **Comparison to Current Code**

Rule 3.3 corresponds to the last sentence of Canon 2B, and Comment [1] corresponds to the last paragraph of the Commentary to Canon 2B. Comments [2] – [4] are new.

### **Rule 3.4 - Appointments to Governmental Positions**

#### **Comparison to 2007 Model Code**

Rule 3.4 is adopted from the 2007 Model Code without modification. Comment [1] has been modified to make reference to the judge's integrity, respect for the separation of powers, and the desirability of minimizing judicial disqualification. In addition, Comment [1] references applicable restrictions on multiple office holding contained in the Massachusetts Constitution, and includes a sentence stating that judges should regularly reexamine the propriety of continuing in any appointed position, as the composition and/or mission of any such committee, board, or commission may change. Comment [2] is adopted without modification.

#### **Comparison to Current Code**

Rule 3.4 corresponds to the first sentence of Canon 4C(2). In conformity with new language used throughout the 2007 Model Code and the Proposed Code, it now identifies the entities or positions to which a judge may accept appointment as those that "concern the law, the legal system, or the administration of justice." The second sentence of Canon 4C(2) now appears as Comment [2]. Comment [1], which reminds judges of the many factors that may be relevant to the appropriateness of accepting an appointment, corresponds to the Commentary to Canon 4C(2), but contains substantial additional detail intended to assist the judge in deciding whether to accept.

### **Rule 3.5 -Use of Nonpublic Information**

#### **Comparison to 2007 Model Code**

Rule 3.5 is adopted from the 2007 Model Code without any substantial modification. "Knowingly" replaces "intentionally" because the Committee believes that a judge should be

prohibited from any known improper use of nonpublic information. The Comments are adopted without any substantial modifications.

#### Comparison to Current Code

Rule 3.5 corresponds to Canon 3B(11). The Comments are new. Notably, new Comment [2] states that the rule's restrictions on a judge's use of nonpublic information are not intended to affect the judge's ability to act on information acquired in a judicial capacity where necessary to protect the health or safety of the judge or other persons.

### **Rule 3.6 -- Affiliation with Discriminatory Organizations**

#### Comparison to 2007 Model Code

Rule 3.6 is adopted from the 2007 Model Code without any substantial modification, and Comments [1], [4], and [5] are consistent with those in the Model Code. Comment [2] is substantially modified to prohibit judges from joining organizations that practice invidious discrimination even if the organization's membership practices are constitutionally protected. The last sentence of Comment [2] is the same as the Model Comment [3], which explains that whether an organization engages in invidious discrimination is a threshold issue, but not the end of the inquiry, as even an organization that does not engage in invidious discrimination may engage in practices such that a judge's membership might erode public confidence in the impartiality of the judiciary.

The Committee considered whether it remains necessary to include an exemption for national or state military service and concluded that it was prudent to do so. It appears in Comment [5], adopted from the Model Code.

#### Comparison to Current Code

Rule 3.6 corresponds to Canon 2C. Rule 3.6(A) expands the prohibition on invidious discrimination to include that based on gender identity, ethnicity, and sexual orientation. Rule 3.6(B) corresponds to the last paragraph of the Commentary to Canon 2C, as is Comment [1]. The portion of Comment [2] that tracks the Model Code also comes from the first paragraph of the Commentary to Canon 2C. The remainder of Comment [2] and Comments [3] – [5] are new.

### **Rule 3.7 - Participation in Legal, Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities**

Rule 3.7 consumed more of the Committee's time than any other rule. Early on, the Committee appointed a subcommittee to make recommendations concerning Rules 3.1 and 3.7. This subcommittee, which met regularly for well over a year, focused most of its efforts on Rule 3.7. The full Committee also devoted substantial portions of numerous meetings to Rule 3.7. Because the 2007 Model Code views participation in extrajudicial activities far more permissively than the Current Code, the Committee painstakingly considered the policy rationales and suitability of each and every aspect of the rule. In general, the Committee agreed

with the overall philosophy of the 2007 Model Code that judges should be encouraged to be actively engaged in the legal community and the community at large. On the other hand, because Massachusetts does not elect its judges, the Committee was concerned that some provisions in Model Rule 3.7 (notably those touching on fundraising) were unnecessarily permissive. After robust debate and consideration of numerous drafts, the Committee unanimously agreed to a proposal that members considered right for Massachusetts.

Rule 3.7 deviates substantially from both the 2007 Model Code and the Current Code. In an attempt to provide the greatest clarity, this section of the Report will address Proposed Rule 3.7's differences from both the 2007 Model Code and the Current Code at the same time. Also to enhance clarity, it will discuss the proposed Comments to Rule 3.7 immediately following the discussion of the section of the rule to which those comments pertain.

Rule 3.7 is derived from both Model Rule 3.7 and Canons 4A, 4B, and 4C of the Current Code. However, it contains numerous substantive differences from both sources. Rule 3.7 also is far more detailed than either the Model Code or the Current Code. This level of detail is a result of the Committee's desire to anticipate and answer many common questions concerning a judge's participation in extrajudicial activities, to respond to certain advisory opinions of the Committee on Judicial Ethics (e.g., 2014-2, 2014-1, 2013-1, and 2011-2), and to incorporate the substance of the Memorandum dated July 31, 2014, from the Supreme Judicial Court to all Massachusetts judges regarding participation in bar association events ("July 31, 2014 - SJC Memorandum").

The title of Rule 3.7 is modified from the 2007 Model Code to add the word "Legal," to reflect that judges frequently participate in legal organizations and activities. The title also reflects that Rule 3.7 addresses many topics that are spread throughout Canons 4A – 4C of the Current Code.

The introductory phrase to Paragraph (A), "subject to the requirements of Rule 3.1," is taken from the Model Rule 3.7 and emphasizes that judge must always consider whether participation in any extrajudicial activity would violate Rule 3.1. The order and punctuation of the language that follows is changed from that used in the Model Code to make it clearer that Rule 3.7 applies to activities of or sponsored by or on behalf of (i) various types of organizations not conducted for profit, and (ii) governmental entities concerned with the law, the legal system, or the administration of justice.

Paragraphs (A)(1) and (A)(2) are new, and are intended to reassure judges that, so long as Rule 3.1 is not an impediment, they may serve as members of the organizations described in Paragraph (A) and may plan and attend events and activities of those organizations. The Current Code does not contain analogous provisions, leaving judges uncertain about their ability to join and generally participate in organizations. New Comment [1] gives some examples of the organizations covered by this rule, and reiterates the importance of the introductory phrase in Paragraph (A).

New Comment [1A] describes the analysis that a judge should perform in determining whether participation in an extrajudicial activity would violate Rule 3.1, and provides a non-

exhaustive list of factors relevant to that analysis. Comment [1A] also clarifies that while a judge may participate only in activities of or sponsored by private non-profit organizations or governmental entities, a judge is not precluded from participating in the events of such organizations even if those events receive sponsorship or financial support from for-profit entities. However, the judge must avoid giving the impression that the organization, its members, or an event's sponsors are in a special position to influence the judge. Similarly, where appropriate in light of the nature of the organization or event, the judge also must avoid giving the impression that the judge favors the organization's mission.

New Comment [1B] notes that the Code explicitly encourages activities where the judge's participation will promote public understanding of and confidence in an independent judiciary, foster collegiality among the bar and communication and cooperation between the judiciary and the bar, enhance the judge's ability to perform judicial or administrative duties, or otherwise further the goals of the courts. (A notable example is speaking to various not-for-profit groups about the administration of justice.) Comment [1B] also explains that the importance of judicial participation in such activities warrants some relaxation of concerns relating to the number and types of sponsors of an event.

Together, Comments [1A] and [1B] reverse the thrust of CJE Opinions 2011-1, 2014-1,<sup>7</sup> and 2014-2, and incorporate the substance of the July 31, 2014 - SJC Memorandum. However, Proposed Rule 3.7 does not grant a judge unlimited discretion to participate in privately-sponsored events. As clearly indicated in Paragraph (A) and Comment [1A], a judge always must consider whether participation in an extrajudicial event is consistent with the principles contained in Rule 3.1.

Paragraph (A)(3) addresses the extent to which a judge may be involved in an organization's fundraising. Reversing the prohibition contained in Canon 4C(3)(b)(i) of the Current Code, Paragraph (A)(3) allows a judge to participate in internal discussions related to fundraising. However, the Committee chose not to go as far as the 2007 Model Code, which, without limitation, allows a judge to participate in planning fundraising and managing and investing an organization's funds. Paragraph (A)(3) allows a judge to participate in planning fundraising and managing and investing an organization's funds only if the organization is composed entirely or predominantly of judges and exists to further the educational or professional interests of judges. This provision corresponds to Canons 4C(3)(b)(i) and 4C(4) of the Current Code.

Paragraph (A)(4) reflects concern about the potentially coercive effect of allowing a judge to solicit contributions or members for an organization; it permits a judge to solicit contributions or members only from members of the judge's family or from judges over whom the judge does not exercise supervisory or appellate authority. This approach is consistent with the 2007 Model Code's treatment of solicitation of contributions, but is more restrictive than its treatment of solicitation of members. Paragraph (A)(4) continues the limits on solicitation contained in Canon 4C(3)(b)(i) and associated Commentary, except that the Proposed Code allows the judge to solicit from members of the judge's family. The Committee omitted the

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<sup>7</sup> Insofar as it defines a fundraising event, CJE Opinion 2014-1 is again addressed below.

Current Code's distinction in Canon 4(3)(b)(iii) between membership solicitations that are essentially a fundraising mechanism and those that are not, because it appeared to the Committee that most membership solicitations have at least an indirect fundraising goal.

Comment [2], derived from Comment [4] of the Model Code, clarifies that a judge may be identified by name and title on an organization's letterhead or other communications, including those that seek donations or the enrollment of members, so long as comparable designations are used for other persons. This practice is prohibited in the Current Code by the Commentary to Canon 4C(3)(b). The Committee discussed this issue extensively. Committee members acknowledged that, in theory, it might be preferable for judges not to be so identified, but the ultimate conclusion was that requiring judges to monitor the communications of organizations and direct the content of their letterhead or websites would be burdensome and potentially unenforceable, and would interfere with the ability of judges to participate in leadership roles in organizations.

Paragraph (A)(5) is adopted without modification from Model Rule 3.7(A)(6). This provision corresponds to Canon 4C(3)(a)(i) and (ii) of the Current Code.

Paragraphs (A)(6) and (A)(6A) address when a judge may serve as a keynote or featured speaker at, receive an award or other comparable recognition at, be featured on the program of, or permit the judge's title to be used in connection with an organization's event. Where the event is not a fundraising event, Paragraph (A)(6) permits a judge to participate as described if the event is sponsored by any organization falling within the limitations of Paragraph (A). Paragraph (A)(6A), which reverses a prohibition in the Commentary to 4C(3)(b) in the Current Code, permits a judge to participate as described at a fundraising event if the organization is concerned with the law, the legal system, or the administration of justice, and the organization promotes the general interests of the judicial branch of government or the legal profession, including enhancing the diversity and professionalism of the bar. The Committee decided not to adopt a less restrictive provision in the 2007 Model Code, which requires only that the organization be concerned with the law, the legal system, or the administration of justice. The Committee reached that conclusion because of concerns about a judge lending prestige to fundraising events of organizations that advocate particular points of view or advance the interests of particular constituencies.

Comment [3] defines the term "fundraising event," which is undefined in the Current Code but has been construed by the Committee on Judicial Ethics. (As noted earlier in this Report, the term "fundraising event" also is defined in the Terminology Section of the Proposed Code.) Explicitly reversing the CJE's definition of fundraising event, see, e.g., CJE Opinion No. 2014-1, the Proposed Code defines a "fundraising event" as one for which the organizers' chief objectives include raising money to support the organization's activities beyond the event itself. Comment [3] explains that, unless that is the case, an event is not a fundraising event even if the revenues ultimately exceed the costs of the event.

Comment [4] explains that the restricted class of organizations described in Paragraph (A)(6A) minimizes the likelihood that the judge's involvement in a fundraising event would

reflect adversely upon the judge's independence, integrity, or impartiality. Comment [4] also gives examples of organizations that fall within and outside this restricted class.

Paragraph (A)(7) permits a judge to make recommendations to public or private fund-granting organizations or agencies on behalf of an organization concerned with the law, the legal system, or the administration of justice. Paragraph (A)(7) is consistent with both the Model Code and Canon 4C(3)(b)(ii) of the Current Code.

Comment [5] notes that a judge's permissible extrajudicial activities may involve writing or teaching. Comment [5] is derived in part from Canon 4B of the Current Code, but has been expanded to include teaching and writing on non-legal matters. There is no counterpart in the 2007 Model Code, although Comment [4] to Model Rule 1.3 notes the "special considerations" that may arise if a judge writes for a for-profit entity. Comment [5] contains a cross-reference to Rule 1.3, Comment [4].

Paragraph (B), permitting judges to encourage lawyers to provide pro bono services, is unchanged from the Model Code and has no counterpart in the Current Code. Comment [6] is the same as Model Comment [5] with the addition of a reference to encouraging reduced-fee legal services. Comment [6] explains that, among other things, judges may participate in events recognizing lawyers who have done pro bono work. There is again no counterpart in the Current Code.

Paragraph (C) has no counterpart in either the Model Code or the Current Code, but it is modeled on a provision included in the Codes of several states. As new Comment [7] explains, Paragraph (C) is intended to allow a judge to participate in the normal daily activities of the judge's child, but is not intended to allow a judge to participate in fundraising activities for the primary or exclusive benefit of the child or to engage in direct solicitations on behalf of the child other than from members of the judge's family.

### **Rule 3.8 - Appointments to Fiduciary Positions**

#### **Comparison to 2007 Model Code**

Rule 3.8 is adopted from the Model Code without any substantial modifications. Comment [1] is adopted without modification.

#### **Comparison to Current Code**

Rule 3.8 corresponds to Canon 4E and its Commentary. Comment [1] corresponds to the Commentary to Canon 4E.

### **Rule 3.9 -- Service as Arbitrator or Mediator**

#### **Comparison to 2007 Model Code**

Rule 3.9 is adopted without modification. Comment [1] is modified to delete "arbitration," because Massachusetts judges do not participate in arbitration in the course of their judicial duties, and to add "conciliation," which Massachusetts judges sometimes perform in the course of their judicial duties. The word "assigned" is deleted because some judicial duties may be voluntarily assumed.

#### **Comparison to Current Code**

Rule 3.9 corresponds to Canon 4F. Comment [1] is new.

### **Rule 3.10 -- Practice of Law**

#### **Comparison to 2007 Model Code**

Paragraph (A) of Rule 3.10 is adopted without substantial modification. Paragraph (B), which is designed to ensure that a judge may serve as an active judge advocate general in the military, is a new provision. Similar provisions are contained in the codes of several other states. Comments [1] and [2] are the same as Model Comment [1]. Because that comment contains two independent ideas, the Committee separated them. New Comment [3] clarifies that a judge who performs legal services in the context of his or her military service must confine that conduct to authorized activities.

#### **Comparison to Current Code**

Paragraph (A) and Comments [1] and [2] correspond to Canon 4G of the Current Code and its Commentary. However, while the Current Code permits a judge only to act for himself or herself in all legal matters, Rule 3.10(A) also permits a judge to give legal advice to and review documents for a member of the judge's family. A judge may not serve as a family member's lawyer in any forum. Paragraph (B) is new.

### **Rule 3.11 - Financial, Business, or Remunerative Activities**

#### **Comparison to 2007 Model Code**

Paragraphs (A) and (C) are adopted without modification from the 2007 Model Code. Paragraph (B) is modified to permit a judge to manage and participate in a business entity only if that entity is primarily engaged in investment of the financial resources of the judge or members of the judge's family. Model Comment [1] is deleted, as it gives guidance inapplicable to Proposed Paragraph (B) as modified. Comment [2] is adopted without modification.

### Comparison to Current Code

Rule 3.11(B) and most of Rule 3.11(C) correspond to Canons 4D(1), 4D(2), and 4D(4) of the Current Code. Rule 3.11(C)(4) and Rule 3.11(A) are new.

### **Rule 3.12-- Compensation for Extrajudicial Activities**

#### Comparison to 2007 Model Code

Rule 3.12 is adopted without modification. Comments [1] and [2] are also adopted, but Comment [2] is expanded to emphasize the judge's obligation to ensure that his or her compensation for extrajudicial activities does not raise any question of undue influence or undermine the judge's ability to act independently and with integrity and impartiality.

#### Comparison to Current Code

Rule 3.12 corresponds to Section 4H(1)(a) and its Commentary.

### **Rule 3.13 - Acceptance and Reporting of Gifts, Loans, Benefits, or Other Things of Value**

Rule 3.13, which concerns when a judge may accept gifts and other benefits, consumed more of the Committee's time than any other rule with the exception of Rule 3.7. Although the Committee's proposed Rule 3.13 is derived from both Model Rule 3.13 and Canon 4D(5), it contains numerous substantive differences from both. Like the discussion of Rule 3.7, this section of the Report begins with a short discussion of the Committee's deliberative process before turning to the differences between the Committee's proposed Rule 3.13 and both the 2007 Model Code and Current Code. Those differences are discussed together, in an attempt to provide the greatest clarity. Also to enhance clarity, the Comments to Rule 3.13 are discussed immediately following the discussion of the section of the rule to which a comment pertains.

Throughout its consideration of Rule 3.13, the Committee gave much consideration to the relationship between the Code of Judicial Conduct and the Massachusetts conflict of interest law, G. L. c. 268A. After consultation with the State Ethics Commission, the Committee learned that the Commission considers the Supreme Judicial Court to have the authority to adopt code provisions that supersede and supplant provisions of c. 268A, §§ 3 and 23(b)(2) - (3).<sup>8</sup> Nevertheless, the Committee was of the opinion that, in general, the Proposed Code should conform to the provisions of c. 268A. Committee members were hesitant to give more leeway to judges to accept gifts, loans, bequests, benefits or other things of value ("gift" or "benefit") than ordinarily is given to state employees. The Committee also sought to craft rules that would

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<sup>8</sup> This is in keeping with provisos contained in c. 268A. Section 3 prohibits public employees from accepting anything of substantial value given to them because of any official action, "otherwise than as provided by law for the proper discharge of official duty." Section 23(b)(2)(i) prohibits acceptance of anything of substantial value because of official position, "which is not otherwise authorized by statute or regulation." The Current Code of Judicial Conduct is Supreme Judicial Court Rule 3:09. The State Ethics Commission has stated that the Rules of the Supreme Judicial Court are comparable to regulations. See State Ethics Commission Advisory 13-1: Making and Receiving Recommendations for Employment.



minimize the risk that the public would regard a gift as given because of the judge's official position or in an attempt to influence the judge in the performance of judicial duties.

The Committee was mindful, however, that the structure of c. 268A and the Code differ. Chapter 268A and regulations thereunder, see 930 CMR 5.08, generally draw clear lines distinguishing gifts that a public employee may accept from those that the public employee may not accept. In contrast, Rule 3.13 prohibits a judge from accepting any gift, loan, bequest, benefit, or other thing of value if acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. Because of the emphasis on the "three I's," the Code has the potential to be both more and less restrictive than c. 268A, depending on the circumstances.

Following lengthy deliberations, the Committee ultimately concluded that, in a few areas, there were sound policy reasons to deviate from c. 268A §§ 3 and 23(b)(2) - (3), and supplant those provisions. Because the Code emphasizes that judges must comply not only with the rules but also with applicable "law," the Committee recognized that there was potential for judges to be confused by these deviations. To avoid such confusion, the word "law" is defined in the Terminology section as not including any provisions of c. 268A §§ 3 and 23(b)(2) - (3), that are inconsistent with the provisions of the Code.

One significant way in which the Committee elected to conform the Proposed Code to the conflict of interest law is by using the same monetary threshold for reporting non-exempt gifts and other benefits. The Current Code and the annual Public Report of Extra-Judicial Income required of all judges by the Supreme Judicial Court both presently provide that non-exempt gifts and other benefits must be disclosed only when the value of the gift or benefit exceeds \$350. The Committee recommends that the trigger for reporting instead be "substantial value," as defined by the State Ethics Commission. As of this writing, the State Ethics Commission defines "substantial value" as \$50 or more. See 930 CMR 5.05. The Committee arrived at this recommendation for two reasons. First, as previously observed, the Committee concluded that it generally is advisable, where possible, for the code to be consistent with c. 268A. Second, because the Committee expanded the list of gifts that may be accepted without disclosure to include, for example, bar association memberships and attendance at bar association programs, the Committee concluded that a \$50 threshold for required disclosure would be both appropriate and not unduly onerous.<sup>9</sup>

Turning to the specific sections of Rule 3.13, Paragraph (A), which establishes the baseline proposition that a judge may not accept any gift or benefit if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity or impartiality, is adopted without modification from Model Rule 3.13, except that the definition of "law" in the Terminology section of the Proposed Code has been modified as explained above. Comment [1] is substantially revised from the Model Code to explain in more detail the relationship between Paragraphs (B) and (C), and to lay out a decision tree for judges to use

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<sup>9</sup> Should the Committee's proposed rules regarding gifts and reporting be adopted, the Public Report of Extra-Judicial Income promulgated by the Supreme Judicial Court will need to be revised.

when analyzing whether to accept a gift or benefit. New Comment [2] provides an example of a gift that would be prohibited by Paragraph (A).

The structure of Paragraph (A) and Comments [1] and [2] differs markedly from the Current Code. Current Canon 4D(5) begins with a blanket prohibition against the acceptance of gifts, but then lays out a series of exceptions not clearly linked by any organizing principle. However, the prohibition in Comment [2] on a judge's acceptance of a gift from a lawyer or party who has come or is likely to come before the judge corresponds to Canon 4D(5)(h) of the Current Code.

Like Model Rule 3.13(B), Paragraph (B) includes a list of items that a judge may accept without public reporting, so long as acceptance is consistent with Paragraph (A). This structure is different from that of Canon 4D(5) of the Current Code, which does not so clearly distinguish gifts that may be accepted, but not reported, from those that may be accepted if reported.

Paragraph (B)(1) and Comment [3] define more precisely than the Model Code the exception that permits a judge to accept gifts or benefits incidental to public recognition of the judge. This exception corresponds to Canon 4D(5)(a) of the Current Code, although Paragraph (B)(1) does not restrict the awarding organization to one whose members do not frequently represent the same side in litigation. Under the Proposed Code, the judge would assess the propriety of accepting an award from any particular organization under the standards set forth in Paragraph (A).

Paragraph (B)(2) differs from the Model Code by limiting the exception to "close personal friends" rather than "friends." This refinement is consistent with the proviso that the person providing the gift or benefit be within the limited category of persons whose appearance or interest in a pending or impending matter before the judge would require the judge's disqualification. Comment [4] is consistent with Model Comment [2] but provides additional explanation. Proposed Paragraph (B)(2) is comparable to Canons 4D(5)(d) and (e) and associated Commentary in the Current Code.

Paragraph (B)(3) corresponds to the Model Code and Canon 4D(5)(c) of the Current Code. New Comment [5] provides additional guidance to judges seeking to assess when an invitation constitutes ordinary social hospitality. There is no counterpart to Comment [5] in the Model Code or the Current Code, although the Current Code does note in its Commentary to Canon 4D(5)(c) that judges should carefully weigh acceptance of hospitality from members of the bar to avoid any appearance of bias.

Paragraphs (B)(4) – (B)(7) are unchanged from the Model Code. Comment [6] is substantively unchanged from Model Comment [3]. These provisions correspond to Canons 4D(5)(a), (f), and (g) of the Current Code, except that the Current Code does not contain a provision concerning rewards and prizes due to random drawings, contests, and similar events.

Paragraph (B)(8) is unchanged from the Model Code, and Comment [7] is substantively unchanged from Model Comment [4]. These provisions correspond to Canon 4D(5)(b) of the Current Code and its Commentary.

Paragraphs (B)(9) and (B)(10) and associated Comments [8] and [9] differ from the Model Code. The Model Code requires that judges disclose these types of gifts or invitations. Paragraph (B)(9) also differs from Canon 4D(5)(a) of the Current Code, which requires disclosure. Paragraph (B)(10) is new. The Committee concluded that, so long as acceptance is consistent with the law and Paragraph (A), a judge should be able to accept and not disclose an invitation to attend a luncheon, dinner, award ceremony or similar event of a bar association or other non-profit law-related organization without charge, and also to accept discounted or free membership in a bar association or other non-profit law-related organization. The rationale is that the public interest will be served by encouraging judges to participate in activities that promote the administration of justice.

The same rationale led the Committee to exempt judges from the requirements of G. L. c. 268A and 930 CMR 5.08 to the extent that these regulations require a judge to have the Chief Justice of the court on which the judge sits certify that a legitimate public purpose will be served by the judge's acceptance of a complimentary invitation to attend a luncheon, dinner, award ceremony or similar event of a bar association or other non-profit law-related organization. The Committee learned in the course of its work that the paperwork required by judges and their Chief Justices has resulted in a significant decline in judicial attendance at bar association events. Accordingly, the Committee concluded that the Proposed Code should eliminate this requirement by including an explicit determination that judicial participation in the activities described in Paragraph (B)(9) presumptively serves a legitimate public purpose.

Unlike the Model Code and the Current Code, Proposed Rule 3.13 does not generally permit complimentary invitations to a judge's spouse, domestic partner, or guest(s) to attend dinners, award ceremonies and similar events of bar association and other non-profit law-related organizations. However, new Comment [8] recognizes that there may be occasions, such as when a bar association is honoring a judge, where it would be appropriate for a judge to accept complimentary invitations to a judge's spouse, domestic partner, or guest(s). In such instances, disclosure is required under Paragraph (C) if the value of the complimentary invitation is substantial, as defined by the State Ethics Commission.

Paragraph (C) provides that a judge may accept any other gift not prohibited by law or Paragraph (A) so long as the judge discloses any such gift if it is of substantial value. The Committee concluded that it is appropriate for a judge to disclose any gift not specifically exempted from disclosure under Paragraph (B), particularly in light of the expansion of Paragraph (B) to include invitations to and membership in bar associations and other law-related organizations. As explained above, the Committee also concluded that lowering the threshold for disclosure to the "substantial value" reflected in state ethics regulations would not be unduly burdensome, as many of the gifts or benefits that would be appropriate for a judge to accept without violating Paragraph (A) are included in the specific exemptions contained in Paragraph (B).

While Canon 4D(5)(h) of the Current Code provides that judges may accept but must report certain gifts (e.g. invitations to law-related events with a value in excess of \$350) the organizational structure of Paragraph (C) is new, consistent with the organizational structure of

the Model Code. However, Paragraph (C) of the Proposed Code differs substantially from Paragraph (C) of the Model Code, which contains a defined list of gifts and benefits that may be accepted but must be disclosed.

New Comment [10] provides an example of when Paragraph (C) would apply, and further explains the relationship among Paragraphs (A), (B), and (C). Furthermore, by addressing whether and in what circumstances a judge may accept a gift of free or discounted legal services, Comment [10] also responds to CJE Opinion No. 2013-1. In that regard, Comment [10] begins with two important observations. First, whether a judge may accept a gift of free or discounted legal services depends on the circumstances. Second, legal services are a gift from both the lawyer providing the services and the lawyer's firm. Comment [10] next notes that a judge may accept free or discounted legal services from a relative or close personal friend consistent with Paragraph (B). However, disclosure is required under Paragraph (C) unless all the members of the lawyer's firm are relatives or close personal friends of the judge.

Comment [10] then addresses in some detail the analysis that applies where the lawyer providing the services is not a relative or close personal friend of the judge or where the lawyer works at a firm where not all of the firm's lawyers are relatives or close personal friends of the judge. Because a gift of legal services is a gift from the firm, a different analysis is necessary in order to avoid the risk that a reasonable person would view a judge's acceptance of free or discounted legal services as undermining the judge's independence, integrity, or impartiality in violation of Paragraph (A). In such circumstances, a judge may accept such services only if two conditions are met. First, the same benefit also must be extended to non-judges in comparable circumstances, to avoid the perception that the benefit is being extended to curry favor with or obtain influence with the judiciary. Second, consistent with Paragraph (A), the lawyer, the lawyer's firm and their interests must not have been before the judge in the reasonably recent past, must not presently be before the judge, and must be unlikely to come before the judge in the reasonably near future, to avoid the perception that the benefit is being extended because of past, present, or future rulings of the judge. Comment [10] gives some examples to clarify how these conditions may be met. Where these conditions are met, disclosure of the legal services is required pursuant to Paragraph (C).

Comment [10A] reflects the Committee's concern that a judge may not be able to afford legal representation to defend a matter before the Commission on Judicial Conduct. This Comment is intended to call attention to G. L. c. 211C, § 7(15), which permits the Supreme Judicial Court, in certain circumstances, to approve payment of reasonable attorneys' fees incurred in such matters. The Committee is aware that the Supreme Judicial Court and the Massachusetts Judges Conference have explored the availability of insurance to cover the cost of legal representation for judges in disciplinary matters. The Committee recommends that this option continue to be investigated and pursued.

## **Rule 3.14 -- Reimbursement of Expenses and Waivers of Fees or Charges**

### **Comparison to 2007 Model Code**

Rule 3.14(A) and (B) are adopted without modification from the 2007 Model Code. New Paragraph (C) is intended to implement the requirements of G. L. c. 268A and 930 CMR 5.08 by ensuring that the Chief Justice of the court of which the judge sits makes an individualized determination that a legitimate public purpose is being served by a judge's acceptance of reimbursements or waivers of fees in connection with an invitation to a judge when the invitation is connected to the judge's official position or official action. This is different from the way that the activities covered by Rule 3.13(B)(9) are treated.

Paragraph (D) is modified to preclude acceptance by the judge of reimbursement for the expenses of a spouse, domestic partner, or guest. Model Comment [1] is deleted and replaced with new Comment [1], which explains that this rule applies specifically to a judge's attendance at tuition-waived and expense-paid seminars that may be sponsored by law-related organizations or educational, civic, religious, fraternal, and charitable organizations. A modified version of Model Comment [3] sets out factors for the judge to consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity. Comment [4] is new.

### **Comparison to Current Code**

Rule 3.14 corresponds to Canon 4H of the Current Code, but Rule 3.14 has a wider focus. The Comments are new.

## **Rule 3.15 - Reporting Requirements**

### **Comparison to 2007 Model Code**

Rule 3.15 is modified substantially from the Model Code and is designed to respond to and modify specific reporting requirements imposed upon Massachusetts judges by the Supreme Judicial Court and the State Ethics Commission.

### **Comparison to Current Code**

Rule 3.15 corresponds in part to Canon 4H(2), as well as Canon 4D(5)(h), but goes beyond these Canons by addressing specific requirements imposed by the Supreme Judicial Court and the State Ethics Commission. Paragraph (A) requires a judge to complete annually the Public Report of Extra-Judicial Income in the form promulgated by the Supreme Judicial Court and the Statement of Financial Interests in the form promulgated by the State Ethics Commission. Paragraph (B) is intended to provide a convenient summary of reporting requirements imposed by Rules 3.12, 3.13, and 3.14. New Comment [1] reminds judges of the requirements of Rule 3.14(C).

**Canon 4 - A Judge Shall Refrain From Political Activity Inconsistent With the Independence, Impartiality, or Integrity of the Judiciary**

Comparison to 2007 Model Code

Because Massachusetts does not elect judges, many aspects of Canon 4 are not relevant to judges in the Commonwealth and have been modified or omitted entirely in the Proposed Code. Proposed Canon 4 omits any reference to candidates for judicial office but incorporates the reference to the "three I's" as governing principles.

Comparison to Current Code

Proposed Canon 4 corresponds to Canon 5 of the Current Code. While Current Canon 5 requires that a judge refrain from political activity, Proposed Canon 5 requires a judge to refrain from political activity that is inconsistent with the independence, impartiality, or integrity of the judiciary.

**Rule 4.1 - Political and Campaign Activities**

Comparison to 2007 Model Code

The Committee rejected Model Rule 4.1 for the reasons stated above, except insofar as it is consistent with Section 5A of the Current Code.

Comparison to Current Code

Rule 4.1 and its Comments correspond to Section 5A of the Current Code and its Commentary.

**Rule 4.2 - Activities of Judges Who Become Candidates for Nonjudicial Office**

Comparison to 2007 Model Code

Rule 4.2 is a renumbered and revised version of Rule 4.5 of the Model Code. Model Rules 4.2 – 4.4 have been omitted, as they pertain to campaign activities of judges. Paragraph (A) of Proposed Rule 4.2 omits as inapplicable the references in the Model Rule to "nonjudicial elective office" and to permission under law for a judge to retain judicial office while becoming a candidate for elective office. Rule 4.2(B) adopts Model Rule 4.5(B). Proposed Comment [1] is derived from Comment [2] to Model Rule 4.5. Comment [2] is new.

Comparison to Current Code

Rule 4.2(A) and Comment [1] correspond to Canon 5A(2) of the Current Code. Rule 4.2(B) and Comment [2] are new.<sup>1,2</sup>

## APPENDIX A

### Committee to Study the Massachusetts Code of Judicial Conduct

Honorable Cynthia J. Cohen (Chair)	Appeals Court
Honorable Peter W. Agnes, Jr.	Appeals Court
Honorable Kenneth V. Desmond, Jr.	Superior Court (elevated from Boston Municipal Court on January 14, 2013)
Honorable Judith Fabricant	Superior Court (Chief Justice, as of December 1, 2014)
Honorable Linda S. Fidnik	Probate and Family Court
Lisa C. Goodheart, Esq.	Sugarman, Rogers, Barshak & Cohen, P.C.
Michael S. Greco, Esq.	K & L Gates LLP
Honorable Diana H. Horan	Housing Court
Honorable Angel Kelley-Brown	Superior Court (elevated from District Court on March 26, 2013)
Professor Renee M. Landers	Suffolk University Law School
Honorable Mark D. Mason	Superior Court (elevated from District Court on January 2, 2015)
Professor Nancy J. Moore	Boston University School of Law
Honorable Karyn F. Scheier	Land Court (Chief Justice until January 2, 2014)
Honorable John F. Spinale	Juvenile Court
Barbara F. Berenson, Esq. (Staff)	Supreme Judicial Court

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#### Former Members:

Professor Luke Bierman	Northeastern University School of Law (Served until February 19, 2014)
Honorable James F. McHugh (retired)	Appeals Court (Served until June 10, 2013)

## APPENDIX B

### Correlation Tables

#### Current Code to Proposed Code

<u>Current Code</u>	<u>Proposed Code</u>
<b>Preamble</b>	Preamble and Scope
<b>Terminology</b>	Terminology
<b>Canon 1</b>	Canon 1 (partial) and Rule 1.2 (partial)
<b>Canon 2</b>	Canon 1 (partial) and Rule 1.2 (partial)
Canon 2A	Rules 1.1 and 1.2 (partial)
Canon 2B	Rules 1.3, 2.4(B) and (C), and 3.3
Canon 2C	Rule 3.6(A)
<b>Canon 3</b>	Canon 2
Canon 3A	Rule 2.1
<b>Adjudicative Responsibilities</b>	
Canon 3B(1)	Rule 2.7
Canon 3B(2)	Rules 2.2, 2.4(A), and 2.5(A) (partial)
Canon 3B(3)	Rule 2.8(A)
Canon 3B(4)	Rule 2.8(B)
Canon 3B(5)	Rule 2.3(A) and (B)
Canon 3B(6)	Rule 2.3(C)
Canon 3B(7)	Rules 2.6(A) and 2.9(A)
Canon 3B(7)(a)	Rule 2.9(A)(1)
Canon 3B(7)(a)(i)	Rule 2.9(A)(1)(a)
Canon 3B(7)(a)(ii)	Rule 2.9(A)(1)(b)
Canon 3B(7)(c)	Rule 2.9(A)(3)
Canon 3B(7)(c)(i)	Rule 2.9(A)(3)(a)
Canon 3B(7)(c)(ii)	Rule 2.9(A)(3)(b) (partial)
Canon 3B(7)(c)(iii)	Rule 2.9(A)(3)(c)
Canon 3B(7)(c)(iv)	Rule 2.9(A)(3)(d)
Canon 3B(7)(d)	Rule 2.9(A)(4)
Canon 3B(7)(e)	Rule 2.9(A)(5)
Canon 3B(8)	Rule 2.5(B) and Comments [3] and [4]
Canon 3B(9)	Rule 2.10(A) and (C)



March 19, 2015

Canon 3B(9)(a)  
Canon 3B(9)(b)  
Canon 3B(9)(c)  
Canon 3B(9)(d)  
Canon 3B(9)(e)  
Canon 3B(10)  
Canon 3B(11)

Rule 2.10, Comment [2]  
Rule 2.10(D) (partial)  
Rule 2.10(F)  
Rule 2.10(E) (partial)  
Rule 2.10(D) (partial)  
Rule 2.8(C)  
Rule 3.5 and Comment [1]

### **Administrative Responsibilities**

Canon 3C(1)  
Canon 3C(2)  
Canon 3C(3)  
Canon 3C(4)

Rule 2.5(A) and (B)  
Rule 2.12(A)  
Rule 2.12(B)  
Rule 2.13(A)(1) (partial), (2), and (3)

### **Disciplinary Responsibilities**

Canon 3D(1)  
Canon 3D(2)

Rule 2.15(A) and (C)  
Rule 2.15(B) and (D)

### **Disqualification**

Canon 3E(1)  
Canon 3E(1)(a)  
Canon 3E(1)(b)  
Canon 3E(1)(c)  
Canon 3E(1)(d)  
Canon 3E(1)(e)  
Canon 3E(1)(f)

Rule 2.11(A)  
Rule 2.11(A)(1) (partial)  
Rule 2.11(A)(5)(a) (partial)  
Rule 2.11(A)(5)(a) (partial)  
Rule 2.11(A)(2)(d) and (5)(c)  
Rule 2.11(A)(1) (partial)  
Rule 2.11(A)(2)(a) (partial), (2)(c) (partial),  
and (A)(3) (partial)  
Rule 2.11(A)(2)(c) (partial) and (A)(3)  
(partial)  
Rule 2.11(A)(2) (partial)

Canon 3E(1)(g)

Canon 3E(1)(h)

### **Remittal of Disqualification**

Canon 3F(1)  
Canon 3F(2)

Rule 2.11(C)  
Rule 2.11(C) (partial)

### **Canon 4**

Canon 3

### **Extrajudicial Activities in General**

Canon 4A  
Canon 4A(1)  
Canon 4A(3)

Rule 3.1 (partial)  
Rule 3.1(C) (partial)  
Rule 3.1(A)

### **Avocational Activities**

Canon 4B

Rule 3.7(A) (partial)

**Governmental, Civic and Charitable Activities**

Canon 4C(1)	Rule 3.2(A) and (B)
Canon 4C(2)	Rule 3.4 and Comment [2]
Canon 4C(3)	Rule 3.7(A)(5)
Canon 4C(3)(a)(i)	Rule 3.7(A)(5)(b)
Canon 4C(3)(a)(ii)	Rule 3.7(A)(5)(a)
Canon 4C(3)(b)(i)	Rule 3.7(A)(3) (partial) and (4) (partial)
Canon 4C(3)(b)(ii)	Rule 3.7(A)(7) (partial)
Canon 4C(3)(b)(iii)	Rule 3.7(A)(4) (partial)
Canon 4C(3)(b)(iv)	Rule 3.1(C)

**Financial Activities**

Canon 4D(1)	Rule 3.11(C)(1) and (3)
Canon 4D(2)	Rule 3.11(A) and (B) (partial)
Canon 4D(4)	Rule 3.11(C)(2) and Comment [1]
Canon 4D(5)	Rule 3.13(A) (partial)
Canon 4D(5)(a)	Rule 3.13(B)(1) (partial), (7), and (9)
Canon 4D(5)(b)	Rule 3.13(B)(8)
Canon 4D(5)(c)	Rule 3.13(B)(3)
Canon 4D(5)(d)	Rule 3.13(B)(2) (partial)
Canon 4D(5)(e)	Rule 3.13(B)(2) (partial)
Canon 4D(5)(f)	Rule 3.13(B)(4)
Canon 4D(5)(g)	Rule 3.13(B)(6)
Canon 4D(5)(h)	Rule 3.13(C) (partial)

**Fiduciary Activities**

Canon 4E	Rule 3.8(A)
Canon 4E(1)	Rule 3.8(A) (partial)
Canon 4E(2)	Rule 3.8(B)
Canon 4E(3)	Rule 3.8(C)

**Arbitration**

Canon 4F	Rule 3.9
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**Practice of Law**

Canon 4G	Rule 3.10(A)
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**Compensation, Reimbursement, and Reporting**

Canon 4H(1)	Rules 3.12 and 3.14(A)
Canon 4H(1)(a)	Rule 3.12 (partial) and 3.14(A) (partial)
Canon 4H(1)(b)	Rule 3.14(B)
Canon 4H(2)	Rule 3.15(A) and (B)(1)

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**Canon 5**

**Political Conduct in General**

Canon 7A(1)

Canon 7(A)(1)(a)

Canon 7(A)(1)(b)

Canon 7(A)(1)(c)

Canon 7(A)(2)

Canon 7(A)(3)

**Canon 6**

**Retired Judges**

Canon 6A(1)

Canon 6A(2)

**Effective Date for Compliance**

Canon 4

Rule 4.1(A)

Rule 4.1(A)(1)

Rule 4.1(A)(2) and (3)

Rule 4.1(A)(4) and (5)

Rules 4.2(A) and 4.1(C)

Rule 4.1(B)

Application

Application(I)(B)

Application (I), Comment [1]

Application (II)

**Proposed Code to Current Code**

<b><u>Proposed Code</u></b>	<b><u>Current Code</u></b>
<b>Preamble</b>	Preamble
<b>Scope</b>	Preamble
<b>Terminology</b>	Terminology
<b>Application</b>	Canon 6
<b>Active Judges</b> Application(I)(A)	New
<b>Retired Judges</b> Application(I)(B)	Canon 6A(1)
<b>Time for Compliance</b> Application(II)	Canon 6B
<b>Canon 1</b>	Canons 1 and 2
<b>Compliance with the Law</b> Rule 1.1	Canon 2A (partial)
<b>Promoting Confidence in the Judiciary</b> Rule 1.2	Canon 2 and 2A (partial)
<b>Avoiding Abuse of the Prestige of Judicial Office</b> Rule 1.3	Canon 2B (partial)
<b>Canon 2</b>	Canon 3
<b>Giving Precedence to the Duties of Judicial Office</b> Rule 2.1	Canon 3A
<b>Impartiality and Fairness</b> Rule 2.2	Canon 3B(2) (partial) and 3B(8) (partial)
<b>Bias, Prejudice, and Harassment</b> Rule 2.3(A)	Canon 3B(5) (partial)
Rule 2.3(B)	Canon 3B(5) (partial)
Rule 2.3(C)	Canon 3B(6)
Rule 2.3(D)	Canon 3B(6) Commentary

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### **External Influences on Judicial Conduct**

Rule 2.4(A)	Canon 3B(2) (partial)
Rule 2.4(B)	Canon 2B (partial)
Rule 2.4(C)	Canon 2B (partial)

### **Competence, Diligence, and Cooperation**

Rule 2.5(A)	Canons 3B(8) (partial) and 3C(1) (partial)
Rule 2.5(B)	Canons 3B(8) (partial) and 3C(1) (partial)

### **Ensuring the Right to be Heard**

Rule 2.6(A)	Canon 3B(7) (partial) and New
Rule 2.6(B)	New

### **Responsibility to Decide**

Rule 2.7	Canon 3B(1)
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### **Decorum, Demeanor, and Communication with Jurors**

Rule 2.8(A)	Canon 3B(3)
Rule 2.8(B)	Canon 3B(4)
Rule 2.8(C)	Canon 3B(10)

### **Ex-Parte Communications**

Rule 2.9(A)	Canon 3B(7) (partial)
Rule 2.9(A)(1)	Canon 3B(7)(a)
Rule 2.9(A)(1)(a)	Canon 3B(7)(a)(i)
Rule 2.9(A)(1)(b)	Canon 3B(7)(a)(ii)
Rule 2.9(A)(2)	New
Rule 2.9(A)(3)	Canon 3B(7)(c)
Rule 2.9(A)(3)(a)	Canon 3B(7)(c)(i)
Rule 2.9(A)(3)(b)	Canon 3B(7)(c)(ii)
Rule 2.9(A)(3)(c)	Canon 3B(7)(c)(iii)
Rule 2.9(A)(3)(d)	Canon 3B(7)(c)(iv)
Rule 2.9(A)(4)	Canon 3B(7)(d)
Rule 2.9(A)(5)	Canon 3B(7)(e)
Rule 2.9(B)	Canon 3B(7)(c) Commentary
Rule 2.9(C)	Canon 3B(7)(c) Commentary
Rule 2.9(D)	Canon 3B(7) Commentary

### **Judicial Statements on Pending and Impending Cases**

Rule 2.10(A)	Canon 3B(9) (partial)
Rule 2.10(B)	New
Rule 2.10(C)	Canon 3B(9) (partial)
Rule 2.10(D)	Canon 3B(9)(b) and (e)
Rule 2.10(E)	Canon 3B(9)(d)
Rule 2.10(F)	Canon 3B(9)(c)

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## **Disqualification**

Rule 2.11(A)	Canon 3E(1)
Rule 2.11(A)(1)	Canon 3E(1)(a) and (e)
Rule 2.11(A)(2)(a)	Canon 3E(1)(f) (partial), (g) (partial) and (h) (partial)
Rule 2.11(A)(2)(b)	Canon 3E(1)(f) (partial), (g) (partial) and (h) (partial)
Rule 2.11(A)(2)(c)	Canon 3E(1)(f) (partial), (g) (partial) and (h) (partial)
Rule 2.11(A)(2)(d)	Canon 3E(1)(d) (partial), (f) (partial), (g) (partial), and (h) (partial)
Rule 2.11(A)(3)	Canon 3E(1)(f) (partial), (g) (partial) and (h) (partial)
Rule 2.11(A)(4)	New
Rule 2.11(A)(5)(a)	Canon 3E(1)(b) and (c)
Rule 2.11(A)(5)(b)	Canon 3E Commentary
Rule 2.11(A)(5)(c)	Canon 3E(1)(d) (partial)
Rule 2.11(A)(5)(d)	New
Rule 2.11(B)	New
Rule 2.11(C)	Canon 3F(1) and (2)

## **Supervisory Duties**

Rule 2.12(A)	Canon 3C(2)
Rule 2.12(B)	Canon 3C(3)

## **Administrative Appointments**

Rule 2.13(A)(1)	Canon 3C(4) (partial)
Rule 2.13(A)(2)	Canon 3C(4) (partial)
Rule 2.13(A)(3)	Canon 3C(4) (partial)

## **Disability and Impairment**

Rule 2.14	New
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## **Responding to Judicial and Lawyer Misconduct**

Rule 2.15(A)	Canon 3D(1) (partial)
Rule 2.15(B)	Canon 3D(2) (partial)
Rule 2.15(C)	Canon 3D(1) (partial)
Rule 2.15(D)	Canon 3D(2) (partial)

## **Cooperation with Disciplinary Authorities**

Rule 2.16(A)	New
Rule 2.16(B)	New

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## **Canon 3**

### **Extrajudicial Activities in General**

Rule 3.1

Rule 3.1(A)

Rule 3.1(B)

Rule 3.1(C)

Rule 3.1(D)

Rule 3.1(E)

## **Canon 4**

Canon 4A

Canon 4A(3)

New

Canon 4A(1)

New

New

### **Appearances before Governmental Bodies and Consultation with Government Officials**

Rule 3.2(A)

Canon 4C(1) (partial)

Rule 3.2(B)

Canon 4C(1) (partial)

### **Testifying as a Character Witness**

Rule 3.3

Canon 2B (partial)

### **Appointments to Governmental Positions**

Rule 3.4

Canon 4C(2) (partial)

### **Use of Nonpublic Information**

Rule 3.5

Canon 3B(11) (partial)

### **Affiliation with Discriminatory Organizations**

Rule 3.6(A)

Canon 2C (partial)

Rule 3.6(B)

Canon 2C Commentary

### **Participation in Legal, Educational, Religious, Charitable, Fraternal or Civic Organizations and Activities**

Rule 3.7(A)

Canon 4C(3)

Rule 3.7(A)(1)

New

Rule 3.7(A)(2)

New

Rule 3.7(A)(3)

Canon 4C(3)(b)(i) (partial) and (4) (partial)

Rule 3.7(A)(4)

Canon 4C(3)(b)(i) (partial), (iii) (partial),  
and (4) (partial)

Rule 3.7(A)(5)

Canon 4C(3)(a)

Rule 3.7(A)(5)(a)

Canon 4C(3)(a)(ii) (partial)

Rule 3.7(A)(5)(b)

Canon 4C(3)(a)(i) (partial) and (ii) (partial)

Rule 3.7(A)(6)

New

Rule 3.7(A)(6A)

New

Rule 3.7(A)(7)

Canon 4C(3)(b)(ii)

Rule 3.7(B)

New

Rule 3.7(C)

New

### **Appointments to Fiduciary Positions**

Rule 3.8(A)

Canon 4E

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Rule 3.8(B)	Canon 4E(2)
Rule 3.8(C)	Canon 4E(3)
Rule 3.8(D)	New

**Service as Arbitrator or Mediator**

Rule 3.9	Canon 4F
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**Practice of Law**

Rule 3.10	Canon 4G (partial)
Rule 3.10(A)	Canon 4G (partial)
Rule 3.10(B)	New

**Financial, Business, or Remunerative Activities**

Rule 3.11(A)	New
Rule 3.11(B)	Canon 4D(2)
Rule 3.11(C)	Canon 4D(1) (partial)
Rule 3.11(C)(1)	Canon 4D(1) (partial)
Rule 3.11(C)(2)	Canon 4D(4) (partial)
Rule 3.11(C)(3)	Canon 4D(1) (partial)
Rule 3.11(C)(4)	New

**Compensation for Extrajudicial Activities**

Rule 3.12	Canon 4H(1) and (1)(a)
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**Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value**

Rule 3.13(A)	New
Rule 3.13(B)	New
Rule 3.13(B)(1)	Canon 4D(5)(a) (partial)
Rule 3.13(B)(2)	Canon 4D(5)(d) (partial), (e) (partial), and Commentary
Rule 3.13(B)(3)	Canon 4D(5)(c)
Rule 3.13(B)(4)	Canon 4D(5)(f)
Rule 3.13(B)(5)	New
Rule 3.13(B)(6)	Canon 4D(5)(g)
Rule 3.13(B)(7)	Canon 4D(5)(a) (partial)
Rule 3.13(B)(8)	Canon 4D(5)(b) (partial)
Rule 3.13(B)(9)	Canon 4D(5)(a) (partial)
Rule 3.13(B)(10)	New
Rule 3.13(C)	Canon 4D(5)(h) (partial)

**Reimbursement of Expenses and Waivers of Fees or Changes**

Rule 3.14(A)	Canon 4H(1) and (1)(a)
Rule 3.14(B)	Canon 4H(1)(b) (partial)
Rule 3.14(C)	Canon 4H(2) (partial)
Rule 3.14(D)	Canon 4H(2) (partial)



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### **Reporting Requirements**

Rule 3.15(A)	Canon 4H(2) (partial)
Rule 3.15(B)	Canon 4H(2) (partial)
Rule 3.15(B)(1)	Canon 4H(2) (partial)
Rule 3.15(B)(2)	Canon 4D(5)(h) (partial)
Rule 3.15(B)(3)	Canon 4H(2) (partial)

### **Canon 4**

### **Canon 5**

### **Political and Campaign Activities**

Rule 4.1(A)	Canon 5A(1)
Rule 4.1(A)(1)	Canon 5A(1)(a)
Rule 4.1(A)(2)	Canon 5A(1)(b) (partial)
Rule 4.1(A)(3)	Canon 5A(1)(b) (partial)
Rule 4.1(A)(4)	Canon 5A(1)(c) (partial)
Rule 4.1(A)(5)	Canon 5A(1)(c) (partial)
Rule 4.1(B)	Canon 5A(3)
Rule 4.1(C)	Canon 5A(2) (partial)

### **Activities of Judges who Become Candidates for Nonjudicial Office**

Rule 4.2(A)	Canon 5A(2) (partial)
Rule 4.2(B)	New